

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.03.2020

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

C.M.A. No. 2732 of 2017

Shriram General Insurance Co. Ltd.

No.66, City Complelx

Thirumalaipillai Road

T.Nagar, Chennai - 600 017.

... Appellant/R2

Vs.

1. Rani

2. Minor Subramani

3. Minor Dharanitharan

4. Vedhachalam

5. Muniyammal

6. Dhamodran

...R1 to R5/Claimant

...6th Respondents/

1st Respondent

Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree in M.C.O.P. No. 187 of 2013 dated 22.02.2017 on the file of the Motor Accidents Claims Tribunal, Sub Court, Madurantakam.

For Appellant : Mr. S.Dhakshnamoorthy

For Respondents : Mr. E.Kumarakotti (For R1 to R5)
Mr. Balan Haridas (For R6)

O R D E R

The appeal on hand is preferred against the judgment and decree dated 22.02.2017 passed in M.C.O.P. No. 187 of 2013.

2. The facts in nut-shell required to consider the present appeal are that the deceased, V.Annadurai was residing at Mettuvar Kollai, Meleripakkam Village, Thirukalukundram Taluk. He was a Plumbing Contractor and his monthly income was about Rs.50,000/-. On 01.12.2013 at 6.30 p.m. the deceased, Sri. V.Annadurai and his assistant while coming from Chengalpattu to Thirukalukundram bazaar to purchase plumbing materials, the deceased V.Annadurai was riding motor cycle bearing Registration No. TN-20-J-5871 Suzuki. One Dhamodharan was riding the motor cycle bearing Registration No. TN-19-E-9510 Pulsar. Both of them

were coming from Chengalpattu to Thirukalukundram and on the way to Thirukalukundram at Desumugipettai Village, opposite to Kannikovil the rider of the Pulsar motor cycle bearing Registration No. TN-19-E-9510 while overtaking had hit at the back side of the Suzuki motor cycle bearing Registration No. TN-20-J-5871 in rash and negligent manner. The deceased was thrown from his motor cycle and fell down and sustained grievous injury and died on the spot. The accident had occurred on account of the rash and negligent of Pulsar motor cycle.

3. The claim petition was filed by the legal heirs of deceased V.Annadurai. The Tribunal adjudicated the issue with reference to the factum regarding the accident as well as the liability was established before the Tribunal. As far as the liability aspect is concerned, the Tribunal was proceeded on the basis with the policy was in existence and the accident was established and therefore, the claimants were entitled for compensation.

4. The learned counsel appearing for the appellant contended that the Tribunal has failed to adjudicate the issue regarding the liability. In the present case, the deceased exchanged his vehicle with Mr.Dhamodran. In other words Mr. Dhamodran was driving the motor vehicle belongs to Annadurai and Mr.Annadurai was riding the motor vehicle belongs to Dhamodran and the exchanges were done with consent. Under those circumstances, the accident took place and Mr.Annadurai died and the insurance company taken a ground by stating that the vehicle, which met with an accident, belongs to deceased Annadurai and therefore, the claimants are not entitled to claim compensation, as there was coverage except Personal Accident Policy the registered owner is not entitled to claim damage under the policy. Thus, the learned counsel for the appellant/ insurance company reiterated that the owner of the vehicle deceased Mr.Annadurai is entitled to claim a sum of Rs.1,00,000/- based on the Personal Accident Policy and the compensation under the Motor Vehicles Act cannot be granted.

5. In support of the said contentions the learned counsel for the appellant relied upon the judgment of the Division Bench of this Court in the case of Divisional Manager, United India Insurance Co. Ltd. Vs. R.Rekha and others reported in 2017 (2) TN MAC 674 (DB). Wherein, the Division Bench held as follows:-

"As far as the present case is concerned, the deceased was travelling as a pillion rider in the two-wheeler owned by him. Admittedly, the deceased himself was the owner of the two-wheeler. At the time of accident the driver of the Two-wheeler suddenly applied brake and hit a Cyclist, which led to the accident. No other Motor Vehicle has been involved in this case.

Thus, the accident did not involve any other Motor Vehicle other than the one in which the deceased was travelling as a pillion rider. Therefore, the liability of the insurance company is only to the extent of indemnification of the insured against the third person or in respect of damages of property. While, so the insurance company cannot be fastened with any liability under the provisions of the Motor Vehicles Act for the death of the deceased who himself was the owner of the vehicle and when no other Motor Vehicle was involved in this case. Therefore, the question of the insurer being liable to indemnify the deceased /owner of the vehicle does not arise. Since the deceased himself was the owner of the Two-wheeler and not a Third party, the claim petition filed by the claimants will not come within the purview of Section 146 and 147 of the Motor Vehicles Act for the purpose of payment of compensation. Therefore, we hold that the impugned judgment and decree of the Tribunal cannot be sustained. The appeal filed by the insurance company deserves only to be allowed. At the same time, it is needless to mention that the claimants are entitled for payment of Rs.1,00,000/- only towards Personal Accident Cover proportionate to the premium paid by the deceased."

6. The judgment cited supra clarifies that the question of the insured being deceased /owner of the vehicle to interfere does not arise since the deceased himself was the owner of the two-wheeler not a third party. Thus, the claim petition filed by the claimants would not come under the purview of 146 and 147 of the Motor Vehicle Act for the purpose of payment of compensation.

7. In the present case, admittedly, the rider of the Pulsar motor cycle committed an act of negligence, which resulted in accident and caused the death of the deceased Annadurai. The deceased Annadurai is the registered owner of the Pulsar motor cycle. This being the factum the rider was a borrower, who stepped into the shoes of the registered owner and therefore, the compensation under the Motor Vehicles Act cannot be granted.

8. Therefore, this Court is of the considered opinion that the claimants are entitled to get the personal accident claim and a sum of Rs.1,00,000/- was assured. It is brought to the notice of this Court that the said amount of Rs.1,00,000/- had already been withdrawn by the claimants. This being the factum, this Court is of the considered opinion that the trial court has committed an error in considering the liability in issue and

therefore, the compensation awarded is not in consonance with the section 146 or 147 of the Motor Vehicles Act.

9. Accordingly, the judgment and decree dated 22.02.2017 passed in M.C.O.P. No. 187 of 2013 is set aside and the Civil Miscellaneous Appeal stands allowed. No costs.

Sd/-
Asst.Registrar (CS VII)

/true copy/
Sub Asst. Registrar

may

To

1.The Sub Judge
Motor Accidents Claims Tribunal
Madurantakam.

2.The Sub Assistant Registrar
A.E.Section
High Court, Madras.

+1 cc to M/s.S.Dhakshnamoorthy Advocate sr22370
+1 cc to M/s.Balan Haridas Advocate sr22569

C.M.A. No. 2732 of 2017

rs1(co)
aa01/03/2021

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