IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.12.2020

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THE HONOURABLE MR. JUSTICE S.S.SUNDAR

C.M.A. No.572 of 2017
and C.M.P. No.11077 of 2017

The Divisional Manager,
United India Insurance Co. Ltd.,
No.95, First Floor, Big Street,
Tiruvannamalai. ...Appellant / Respondent

Vs

1.Bharathi
2.Minor Venkatesan
3.Minor Pavithira
4.Raniammal
(Minor Respondents 2 & 3 rep. by their mother and next friend Bharathi, the 1st respondent.)
...Respondents / Petitioner

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree in M.C.O.P. No.836 of 2013 dated 01.08.2015 on the file of the Motor Accident Claims Tribunal (Special Sub-Judge (FAC)), Tiruvannamalai.

For Appellant : M/s. R.Rathna Thara

For Respondents 1-4 : Mr. B.Jawahar

JUDGMENT

This appeal is preferred by the insurance company as against the award of Motor Accident Claims Tribunal (Special Sub-Judge (FAC)), Tiruvannamalai in M.C.O.P. No.836 of 2013.

2. Brief facts that are necessary for the disposal of this appeal are as follows.

The respondents are the legal heirs of one Senthil who died in a motor accident. The deceased by name Senthil is the owner cum driver of an Auto Rickshaw. While on his trip from Tiruvannamalai to Tirukoilur road, a stray dog crossed the road and dashed on the auto and as a result, the Auto Rickshaw capsized and fell into a pit. The deceased suffered serious injuries and died on the next day of the accident. Thereafter, the respondents filed a claim petition claiming a sum of Rs.10,00,000/-. It is contented by the appellant that the petition was not filed under Section 163(A) of Motor Vehicles Act. Since, there are violation of policy conditions, it was further contented by the appellant that the insurance company is not liable to pay any compensation. Since the owner cum driver of the auto was not covered by the policy, it is further contended that the claim petition is not maintainable against the appellant. The Tribunal, though considered one of the legal issue with regard to the liability of the insurance company in the absence of a policy covering the owner cum driver of the auto, held that the insurance company is still liable as the policy taken by the deceased was a comprehensive policy and the same would cover to pay compensation to the occupant of the vehicle including the driver. The Tribunal thereafter, considered the income of the deceased and held that the appellant should pay a sum of Rs.7,02,500/- in all as compensation. Aggrieved by the award of the Motor Accident Claims Tribunal, the above appeal is preferred by the insurance company.

3. Though the learned counsel for the appellant raised several legal issues, one of the main issue raised by the learned counsel for the appellant is that the owner cum driver of the vehicle is not covered by the policy and no premium was paid to cover the owner or the driver of the vehicle. Learned counsel for the appellant submitted that the findings of the lower Court that the insurance company is liable in view of the comprehensive policy obtained by the owner cum driver of the vehicle is not sustainable. Learned counsel also relied upon the judgment of the Hon'ble Supreme Court in the case of Ramkhiladi and another Vs. The United India Insurance Company and another reported in [AIR 2020 SC 527].

4. In the said judgment of the Hon'ble Supreme Court, it is admitted that the deceased was the driver of the vehicle and borrowed the vehicle from the registered owner. The deceased was travelling on a motor cycle bearing Reg. No.RJ-02-SA-7811. It was admitted that the accident occurred on account of rash and negligent driving of the another motor cycle bearing Reg. No.RJ-29-2M-9293. The appellants before the Hon'ble Supreme Court filed a claim petitioner before the Motor Accident Claims Tribunal, Laxmangarh (Alwar) Rajastan under Section 163(A) of Motor Vehicles Act. The claim petition was preferred only against the owner of motor cycle bearing Reg. No.RJ-02-SA-7811 and insurer. It is also admitted before the Hon'ble Supreme Court that neither the owner of the vehicle nor the insurance company of the vehicle which caused the accident were joined as opponents in the claim petition. No claim petition was filed against the driver, owner and the insurance company of the

vehicle involved in the accident namely the motor cycle bearing Reg. No. RJ-29-2M-9293. Despite the fact that the claimants are entitled to proceed against the owner and insurer of the offending vehicle, they were not impleaded as parties in the claim petition. It was held that the insurance company who insured the vehicle that was driven by the victim is not liable to pay the compensation. The Tribunal answered the issues in favour of the claimants and held that the insurance company is liable to pay compensation under Section 163(A) of the Motor Vehicles Act. The respondent insurance company of the motor cycle bearing Reg. No.RJ-29-SA-7811 preferred an appeal before the High Court and the High Court allowed the appeal and quashed the award of Motor Accident Claims Tribunal. On further appeal, the Hon'ble Supreme Court held that the claim under Section 163 (A) of the Act being made only against the owner who is not responsible for the accident is not liable. The deceased being a borrower of the vehicle stepped into the shoes of the owner and that therefore, the claim petition is not maintainable under Section 163 (A) of the Act.

5. Learned counsel for the appellant submitted that the same judgment is followed by this Court in the judgment in United Insurance Company Ltd., Vs. R. Reka reported in [(2017) 2 TNMAC 674].

6. Having regard to the precedents referred to by learned counsel for the appellant, this Court is unable to approve the award of Motor Accident Claims Tribunal holding that the claimants are entitled to proceed against the insurance company which is the insurer of the vehicle owned by the deceased.

7. As a result the Civil Miscellaneous Appeal is allowed and the award of the Motor Accident Claims Tribunal in M.C.O.P. No.836 of 2013 is set aside. No costs. The connected miscellaneous petition is closed. It is represented by the counsel for the appellant that some amount was deposited by the appellant pursuant to order of Court. Since the claim petition is dismissed in toto, the appellant is entitled to withdraw the amount, if any, deposited.

Sd/-
Assistant Registrar (CS-IV)

// True Copy //

Sub Assistant Registrar

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To

1.The Motor Accident Claims Tribunal
(Special Sub-Judge (FAC)),
Tiruvannamalai.

2.The Section Officer,
V.R.Section,
High Court, Madras.

+1cc to M/s.R.Rathna Thara, Advocate SR.No.39981

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GP(CO)
RVM(20/09/2021)