IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 16.03.2021

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

CMA.No.3932 of 2008 and
M.P.No.1 of 2008

The Oriental Insurance Co. Ltd.,
Gudiyattam ... Appellant/ II Respondent

Vs.

1. Sadhasivam
2. Rani
3. Vijayakumar ...I,II,III Respondents/ Claimants
4. MKumaresan ... IV Respondents /I Respondent

This Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988, against the decree and judgment dated 30.06.2008 passed in M.C.O.P.No.418 of 2003 by the Subordinate Judge, Motor Accident Claims Tribunal, Tirupathur.

For Appellant : Mr.J.Chandran

For respondents : Notice served to R1 to R4
NA

J U D G M E N T

Dissatisfied with the orders passed by the Tribunal, the insurance company has filed the present appeal to set aside the same.

2. The claimants have filed a claim petition under Section 166 of the Motor Vehicles Act before the Tribunal seeking compensation of Rs.6,00,000/- for the death of one M.Pandiyan, son of the first and second claimant and brother of the third claimant, in a road accident that took place on 16.03.2003.

3. The brief case of the claimants is as follows: On 16.03.2003, the deceased was riding a motorcycle bearing registration No.TN-29-T-1469, belonging to the first respondent from Jolarpettai towards Kaveripattu Village and while he was nearing Kethandaptti road at Kaveripattu Koot road, a dog suddenly crossed the road and to avoid dash against it, he applied sudden brake and swerved the motorcycle left side, thereby the motorcycle hit against a bullock cart,

parked on the road side, due to which he sustained grievous injuries on his vital organs. The contention of the claimants is that, the deceased was admitted to Bethestha Hoslpital, Ambur and after first aid treatment, he was taken to CMC Hospital, Vellore, however, he died on the way to hospital. According to the claimant, on the date of accident, the first respondent/ owner of the vehicle insured his motorcycle with the second respondent/ insurance company and hence, both of them are liable to pay compensation.

4. The claim petition was resisted by the second respondent/ insurance company by filing counter affidavit.

5. Before Tribunal, on the side of the claimants, two witnesses were examined as PW1 and PW2 and Ex.P1 to Ex.P5 were marked. On the side of the II respondent, one witness was examined as RW1 and Ex.R1 to Ex.R5 were marked.

6. After analysing the evidence on record, the Tribunal has awarded a total compensation of Rs.4,25,000/- and also directed the first and second respondent to pay 50% of the amount i.e. a sum of Rs.2,12,500/- each to the claimants. The compensation awarded under various heads are extracted hereunder.

Sl No	Heads	Amount in Rs.
1	Loss of income 3000-1000=2000x12x17	4,08,000
2	Loss of love and affection	15,000
3	Funeral expenses	2,00 0
	Total	4,25,000

Aggrieved over the compensation awarded by the Tribunal, the insurance company has filed the present appeal.

7. Heard the learned counsel for the appellant and I have perused the materials on record.

8. The learned counsel appearing for the appellant/ insurance company submitted that it is an admitted fact that the deceased hit the motorcycle driven by him against a parked bullock cart and hence, nobody responsible for the accident and hence, the insurance company cannot be held liable to pay compensation. He also submitted that no premium was paid covering the death of the driver of the motorcycle and hence, they are not liable to pay compensation and the compensation awarded by the Tribunal is on the higher side and hence, he prayed to set aside the award passed by the Tribunal.

9. Though notice was served to the respondents 1 to 4, none appeared on behalf of them.

10. Now the point for consideration is whether the appellant/ insurance company is held liable to pay compensation?

11. POINT

It is not disputed by both the parties that on the date of accident, the offending vehicle was insured with the insurance company/ appellant and the validity period of the insurance policy was in existence. According to the learned counsel for the appellant, no premium was paid covering the driver of the motorcycle and the policy covers only the owner of the vehicle and hence, the insurance company is not liable to pay compensation. To support his contentions, he relied upon a decision rendered by the Honourable Supreme Court in Ramkhiladi Vs. United Insurance Company and another in Civil Appeal No.9393 of 2019 dated 07.01.2020. In the above said judgment, the Honourable Supreme Court has considered the case filed under Section 163-A of the Motor Vehicles Act. However, as far as the liability is concerned, the Honurable Court has held at paragraph No.5.5 and 5.6. thus.

> 5.5. It is true that, in a claim under Section 163-A of the Act, there is no need for the claimants to plead or establish the negligence and / or that the death in respect of which the claim petition is sought to be established was due to wrongful act, neglect or default of the owner of the vehicle concerned. It is also true that the claim petition under Section 163-A of the Act is based on the principle of no fault liability. However, at the same time, the deceased has to be a third party and cannot maintain a claim under Section 163-A of the act against the owner/insurer of the vehicle which is borrowed by him as he will be in the shoes of the owner and he cannot maintain a claim under Section 163-A of the Act against the owner and insurer of the vehicle bearing registration No. RJ-02-SA-7811. In the present case, the parties are governed by the contract of insurance and under the contract of insurance, the liability of the insurance company would be qua third party only. In the present case, as observed herein above, the deceased cannot be said to be a third party with respect to the insured vehicle bearing registration No.RJ 02 SA 7811. There cannot be any dispute that the liability of the insurance company would be as per the terms and conditions of the contract of insurance. As held by this court in the case of Dhanraj (supra), as insurance policy covers the liability incurred by the insured

in respect of death of or bodily injury to any person (including an owner of the goods or his authorized representative) carried in the vehicle or damage to any property of a third party caused by or arising out of the use of the vehicle. In the said decision, it is further held by this court that Section 147 does not require an insurance company to assume risk for death or bodily injury to the owner of the vehicle.

5.6. In view of the above and for the reasons stated above, in the present case, as the claim under Section 163-A of the Act was made only against the owner and insurance company of the vehicle which was being driven by the deceased himself as borrower of the vehicle from the owner of the vehicle and he would be in the shoes of the owner, the High Court has rightly observed and held that such a claim was not maintainable and the claimants ought to have joined and / or ought to have made the claim under Section 163-A of the Act against the driver, owner and / or the insurance company of the offending vehicle i.e. RJ 29-2M 9223 being a third party to the said vehicle.

12. In the present case on hand, the rider of the motorcycle had borrowed the vehicle from the first respondent. No other materials or evidence placed before this court to prove the contention of the respondent/ claimant that the rider of the vehicle other than the owner of the vehicle also entitled for getting compensation under the "Act policy". There is some force on the contention of the counsel for the appellant that in an " Act policy" the insurance company is not liable to pay compensation to the third party.

13. Accordingly, in the light of the above decision of the Honourable Supreme court and also inview of the aforesaid discussions, the liability of the insurance company would be as per the terms and conditions of the contract of insurance and hence, the insurance company/appellant is not liable to pay compensation to the pillion rider of the vehicle, who is not covered under the policy.

14. As far as the quantum of compensation awarded by the Tribunal is concerned, no arguments were advanced. The compensation awarded by the tribunal also seems to be very reasonable. Therefore. this court is of the view that there is no reason to set aside the quantum of compensation awarded by the tribunal. The point is answered accordingly.

15. In the result,

(i) The civil miscellaneous appeal is allowed. No costs. The connected miscellaneous petition is closed.

(ii) The quantum of compensation awarded by the tribunal is upheld.

(iii) The fourth respondent/owner of the motorcycle is directed to deposit the entire compensation as awarded by the Tribunal along with interest at the rate of 6% per annum within a period of eight weeks from the date of receipt of a copy of this order.

(iv) On such deposit being made by the fourth respondent/owner of motorcycle, the claimants are entitled to withdraw the same, after following due process of law.

(v) The appellant/Insurance Company is exonerated from paying the compensation amount and they are at liberty to withdraw the compensation amount, if already deposited by them.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

mst

To

1. The Subordinate Judge,
   Motor Accident Claims Tribunal,
   Tirupathur.

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

CMA. No.3932 of 2008
and
M.P.No.1 of 2008

SS(CO)
GMY(09/11/2021)