IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 25.02.2021

CORAM

The Honourable Mr. Justice R. Subbiah
and
The Honourable Mr. Justice Sathi Kumar Sukumara Kurup

C.M.A. Nos.1140 and 1141 of 2016
and
C.M.P. Nos. 8600 and 8599 of 2016

Royal Sundaram Alliance Insurance Company Limited,
Subramaniam Building, 3rd Floor,
No.1, Club House Road,
Chennai-600 002. ..Appellants in both appeals/2nd Respondent

Versus

1.Grandhi Sridevi
W/o.Late Siva Ganesh
2.Grandhi Viswa Manikanta Suhas (Minor)
S/o.Late Siva Ganesh
(Minor 2nd respondent is represented by
his mother Grandhi Sridevi, 1st respondent herein)
3.Grandhi Naga Lakshmi
W/o.Suresh
4.Grandhi Suresh ..Respondents in
S/o.Soma Ganapathi Rao
C.M.A.No.1140 of 2016/
Petitioners 1 to 3/1st Respondent

1.Kancherla Ratna Madhuri
W/o.Late Veera Sesha Sai
2.Kancherla Veera Raghava Sujan
S/o.Late Veera Sesha Sai
3.Kancherla Veera Satya Tejas
S/o.Veera Sesha Sai
(Minors/Respondents 2 and 3 are rep.
by their mother Kancherla Ratna Madhuri,
the 1st respondent herein)

4.Kancherla Raghava
W/o.Bhaskara Rao

5.Grandhi Suresh ..Respondents/
Petitioners 1 to 4/ 1st Respondent in
S/o.Soma Ganapathi Rao C.M.A.No.1141 of 2016

Common Prayer: These Civil Miscellaneous Appeals are filed under Section 173 of Motor Vehicles Act, 1988, against the award dated 22.12.2015 in M.C.O.P. Nos.1 and 2 of 2014 on the file of the Motor Accidents Claims Tribunal,Sub-Court, Yanam.

For Appellant :: Mrs. Elveera Ravindran
(In both C.M.As) Mr.K.Vinod
(For R1 to R3
in CMA.NO.1140/2016)

(For R1 to R4 :: Mr.M.Ravi
in CMA.NO.1140/2016)

For R5 :: Ex-parte
in CMA No. 1141/16
& CMA No. 1140/16

COMMON JUDGMENT
(Judgment of the Court was made by SATHI KUMAR SUKUMARA KURUP, J)

Both these appeals are filed by Royal Sundaram Allied Insurance Company, Chennai assailing the award dated 22.12.2015 passed in M.C.O.P.Nos.1 and 2 of 2014 on the file of the Motor Accidents Claims Tribunal, Sub-Court, Yanam.

2. Since both the appeals arise out of the same accident and award, they are taken up together and disposed of by this common judgment.

3. The parties to these appeals are referred to as per their ranks in the claim petition for the sake of convenience.

4. Before the Tribunal, two Claim Petitions were filed as MCOP Nos. 1 and 2 of 2014. MCOP No. 1 of 2014 was filed by the wife, minor son and mother of the deceased Grandhi Siva Ganesh, while the other claim petition in MCOP No. 2 of 2014 was filed by wife, minor children and mother of the deceased Veera Seshasai.

5. As per the averments in the claim petitions in MCOP Nos. 1 and 2 of 2014, on 21.01.2013, the deceased Grandhi Siva Ganesh was driving the car bearing Registration No. PY 04 6662 in which the deceased Veera Seshasai was an occupant. At about 2.30 pm the car was proceeding from Visakhapatnam to Yanam and when it reached a place called Tetagunta Check post, the driver of the vehicle lost control over the vehicle and hit against a cement pole situated on the road side. As a result, the car turned upside down causing injuries to both the occupants in the car. Both the occupants of the car were taken to the hospital, however, the driver of the car namely Grandhi Sivaganesh died on the way to hospital. Therefore, a complaint was lodged by the injured Veera Seshasai, based on which a case in Crime No.12 of 2013 was registered for an offence u/s.304 (A) and 338 IPC as against the deceased Grandhi Sivaganesh by the S.H.O, Tuni Rural Police Station. Subsequently, Veera Seshasai also died in the hospital. Therefore, the legal heirs of the deceased Grandhi Sivaganesh have filed M.C.O.P.No.1 of 2014 seeking compensation for the death of Grandhi Siva Ganesh and the legal heirs of Kancharala Veeraseshasai have filed M.C.O.P.No.2 of 2014 claiming a sum of Rs.30,00,000/- and Rs.25,00,000/- respectively as compensation.

6. Resisting the Claim Petitions, the appellant/Insurance Company filed separate but identical counter statement in both the claim petitions. It was the common defence of the appellant/Insurance Company that the Insurance Policy was issued in favour of Grandhi Suresh and it was in force. However, the deceased Siva Ganesh drove the vehicle without a valid driving licence and it is one of the violations of the conditions of the policy. Even as per the statement made in the claim petition, the driver of the car lost control and hit a road side cement pole. There was no other motor vehicle involved in the accident. The deceased was not a paid driver and as such he cannot be treated as a third party to the policy of insurance. In such circumstances, the Insurance Company prayed for dismissal of both the claim petitions.

7. Before the Tribunal, in order to prove the averments in the respective claim petitions, the first claimant in MCOP No. 1 of 2014 namely Grandhi Sridevi was examined as PW1. Similarly, the first claimant in MCOP No. 2 of 2014 namely Kancherla Ratna Madhuri was examined as PW1. In both the claim petition, one Delta Venkata Satyanarayana Ramaraju was examined as PW2, who witnessed the accident. In MCOP No. 1 of 2014, Exs. P1 to P11 were marked. Similarly, in MCOP No. 2 of 2014, Exs. P1 to P15 were marked. On behalf of the respondents in MCOP Nos. 1 and 2 of 2014, neither any witness was examined nor any document marked.

8. The Motor Accidents Claims Tribunal (Sub-Court), Yanam on consideration of the oral and documentary evidence, awarded a total sum of Rs.28,21,000/- and Rs.21,90,000/- as compensation. Aggrieved by the award passed against the Insurance Company, the present appeals are filed.

9. Mr. Elveera Ravindran, learned counsel appearing for the appellant-Insurance Company would contend that the accident had occurred only due to the negligent driving on the part of the deceased Siva Ganesh. There was no other motor vehicle involved in the accident and the accident was by reason of negligence attributable on the part of the deceased driver of the car. Further, the deceased driver of the car was the son of the owner of the Car and he cannot be regarded as a paid driver warranting the Tribunal to mulct the insurance company to pay the compensation amount. Assuming that the deceased driver was employed by the owner of the vehicle, then the compensation can at best be awarded as per the provisions of The Workmen's Compensation Act and to cover the owner of the vehicle under the Personal Accident cover. The insurance policy is issued to indemnify the damage or loss of life and injury caused to 3rd party by the motor vehicle. Therefore, provisions of the Motor Vehicle Act and the policy of the insurance is against the claim made in this case.

10. As far as M.C.O.P. No. 2 of 2014 is concerned, it was filed by the wife, minor children and mother of the deceased Veera Seshasai who was an occupant of car belonging to the 1st

respondent. The car was driven by the son of the owner of the vehicle. Due to rash and negligent driving, the driver lost control and hit against the roadside lamp-post. There was no other motor vehicle involved in the accident and therefore, the claimants in MCOP No. 2 of 2014 can only make a compensation as against the owner of the vehicle and the insurer of the vehicle cannot be mulcted with any liability to pay the compensation.

11. It is stated by the counsel for the appellant that as per the insurance policy, the owner of the car is covered under the policy of insurance for the injury or death to the maximum of Rs.1,00,000/- only whereas the Tribunal had granted award of Rs.20,25,000/- against the Insurance Company for the death of Veera Seshasai, an occupant of the car in M.C.O.P.No2 of 2014 and Rs.26,56,000/- for the death of Grandhi Siva Ganesh, who was the son of the owner of the car and who has driven the car on the fateful day. In this context, the learned counsel for the appellant/Insurance Company had relied on the rulings of the Hon'ble Supreme Court reported in New India Assurance Company Ltd., Vs. Prabha Devi and Others reported in 2013 (1) TNMAC 781 (SC) and New India Assurance Company Ltd., Vs. C.M.Jaya and Others reported in 2021 (1) ACC 299 (SC). Reliance was also place on the decision of Division Bench of this Court, in (Divisional Manager, United India Insurance Co. Ltd., Vs. R.Rekha) reported in 2017 (2) TNMAC 674 (DB) wherein one of us (R. Subbiah, J) was a party to the Division Bench in which it was held that when there was no other motor vehicle involved in the accident and the deceased himself was tort-feasor, insurer cannot be mulcted with the liability to pay compensation. The learned counsel for the appellant therefore prayed for allowing the appeals.

12. On the above contentions, this Court heard the learned counsel for the claimants, who only supported the award passed by the Tribunal and prayed for dismissal of the appeals.

13. Admittedly, on the fateful day, the deceased Grandhi Siva Ganesh was driving the car in which the other deceased Veera Seshasai was an occupant. The driver Grandhi Siva Ganesh was none other than the son of the owner of the car. He was not admittedly a paid driver engaged by the owner of the car to drive the vehicle. Further, the driver of the car lost control and hit a road side cement pole and in the impact, the car toppled upside down. The driver Grandhi Siva Ganesh died on the spot while the occupant of the car Veera Seshasai died subsequently. It is to be noted that when Veera Seshasai was taken to the hospital, he gave a complaint against the driver Grandhi Siva Ganesh as responsible for the accident and therefore, a case in Crime No. 12 of 2013 was registered for the offence punishable under Sections 304 (A) and 338 of IPC against Grandhi Siva Ganesh. After giving the complaint, the occupant of the car Veera Seshasai also died due to the injuries he sustained in the accident. While so, the driver of the car Grandhi Siva Ganesh himself was the tort-feasor, who, due to his own negligence, has crashed the car against a road side cement pole. In such circumstances, in our opinion, the Insurance Company cannot be mulcted with any liability to pay

compensation to the legal heirs of the deceased Grandhi Siva Ganesh, who are the claimants in MCOP No. 1 of 2014 and at best, they are only entitled for payment of compensation under the Personal Accident coverage of Rs.1,00,000/-. But the Tribunal awarded Rs.28,21,000/- which cannot be sustained. In this context, reference can be made to the decision of the Division Bench of this Court in (Divisional Manager, United India Insurance Co. Ltd., Vs. R.Rekha) reported in 2017 (2) TNMAC 674 (DB) wherein it was held as follows:-

> 26. 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 or 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.

14. Therefore, in the light of the aforesaid decision of the Division Bench of this Court, the award passed by the Tribunal in MCOP No. 1 of 2014 cannot be sustained and it is liable to be set aside holding that the claimants are entitled only a sum of Rs.1,00,000/- towards personal accident cover.

15. As far as the award passed in MCOP No. 2 of 2014 filed by the legal heirs of Veera Seshasai, admittedly, he was an occupant of the car driven by Grandhi Siva Ganesh. For the death of the occupant of the Car, the Insurance Company is

liable to be indemnified by treating the occupant of the car as a third party to the insurance policy. We also find that Veera Seshasai was aged 36 years at the time of accident. He was doing business in fire works as also rice business in a licensed premises as could be evident from Ex.P7, licence and Ex.P8, Licence issued by the Commissioner of Municipality, Yanam for doing rice business. Under Ex.P9, it was established that certificate was registration was issued in the name of the deceased to run a business in the name and style of M/s. Sri Veera Badhra Rice Store. The claimants have also produced Ex.P11, Returns for payment of commercial tax at compounded rate. Under Ex.P11, the annual turn over was shown as Rs.20,00,000/-. Having regard to the above documentary evidence, which remain unassailed, the Tribunal has taken a sum of Rs.15,000/- as monthly income of the deceased Veera Seshasai and arrived at a sum of Rs.1,80,000/- as his annual income. The Tribunal deducted Rs.45,000/- thereof towards personal expenses. Applying multiplier '15' the Tribunal awarded Rs.20,25,000/- towards loss of income. We are in complete agreement with the compensation awarded by the Tribunal towards loss of income. The Tribunal also awarded Rs.1,00,000/- towards loss of consortium to the first claimant/wife, Rs.15,000/- towards transportation and funeral expenses and Rs.50,000/- towards loss of estate. These amount awarded by the Tribunal are fair and reasonable and therefore we desist from interfering with the same.

16. In the result,

a) C.M.A.No.1140 of 2016 is allowed and the award dated 22.12.2015 passed by the Motor Accident Claims Tribunal, Yanam in M.C.O.P.No.1 of 2014 is modified to the extent that the claimants are entitled for a sum of Rs.1,00,000/- only as compensation as against Rs.28,21,000/- awarded by the Tribunal.

b) C.M.A.No.1141 of 2016 filed by the appellant-Insurance Company is dismissed confirming the award dated 22.12.2015 passed in MCOP No. 2 of 2014 on the file of Motor Accident Claims Tribunal, Yanam in favour of the claimants.

c) The appellant insurance company is permitted to withdraw the amount deposited in MCOP No.1 of 2014) except the sum of Rs.1,00,000/- with accrued interest and cost, which we have awarded in favour of the claimants

d) The appellant Insurance Company is directed to deposit the entire compensation amount awarded by the Tribunal in MCOP No.2 of 2014 with accrued interest and costs, if not already deposited, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the claimants the first and fourth claimants are permitted to withdraw their share as has been apportioned by the Tribunal.

e) The award amount of the minor respondents 2 and 3 is directed to be deposited in any one of the Nationalized Bank, till they attain majority. The first claimant, being the mother of the minor respondents 2 and 3 is permitted to withdraw the accrued interest once in every three months for the welfare of the minor respondents. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

gbi/rsh
To

1.The Sub-Judge,
Motor Accidents Claims Tribunal,
Yanam.
2.The Section Officer,
V.R.Section,
High Court of Madras.

+2 ccs to Mrs. Elveera Ravindran, Advocate Sr.NO. 11674,11675
CMA Nos.1140 & 1141/2016
PM(CO)
A.SK(09.11.2021)