



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 15.12.2020

Delivered on : 13.08.2021

CORAM

THE HONOURABLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

C.M.A.No.2800 of 2011

M/s.Bajaj Allianz General Insurance
Company Limited
Door No.11, People's Park
3rd Floor (Office 6-A)
Govt. Arts College Road,
Coimbatore-18.

...Appellant

Vs.

1.Kavitha
W/o.Ashok
2.Minor A.Divin
S/o.Late Ashok
3.Muthulakshmi
W/o.P.Thangavel
4.P.Thangavel
S/o.Periyanna Gounder
(R-2 Minor respondent represented by his
next friend Kavitha, 1st respondent herein)

...Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 30.04.2010 in M.C.O.P.No.711 of 2008 on the file of the Motor Accident Claims Tribunal, Principal District Court, Dharmapuri.

For Appellant :: Mrs.R.Sreevidhya

For R1 to R4 :: Mr.V.Raghavachari
M/s.V.Srimathi



JUDGMENT

(The case was heard through video-conferencing)

WEB COPY

This Civil Miscellaneous Appeal has been filed against the Judgment and Decree dated 30.04.2010 in M.C.O.P.No.711 of 2008 on the file of the Motor Accident Claims Tribunal, Principal District Court, Dharmapuri.

2. The case in brief are as follows:

On 07.05.2004 at about 4.30 hrs, the deceased was travelling in a Qualis Car bearing Registration No. TN-29-E-3939 from Chennai towards Dharmapuri. When he was nearing the Mill Medu, the driver of the car driven in a rash and negligent manner, dashed against the parked lorry, as a result of which, he sustained grievous injuries all over the body and died on the spot.

3. Mrs.R.Sreevidya, the learned counsel for the appellant/Insurance Company has submitted her arguments. As per her submissions, the Tribunal failed to appreciate the fact that the driver of the car did not have a valid driving license. As per Section 147 of Motor Vehicles Act, the policy of insurance taken by the deceased is to cover the risk or loss by causing injury or death to a third party while using the motor vehicle in a public area. The policy of insurance taken by the deceased does not cover his injury or death. Hence, the claim petition itself is not maintainable.

4. Mr.V.Raghavachari, learned counsel for the respondents/claimants has submitted his arguments. As per his submissions, the Motor Accident Claims Tribunal had properly appreciated the facts of the case and had arrived at a conclusion that the claimants are not third parties and the appellant is the insurer of the deceased vehicle and also admitted that the deceased had paid the premium for driver-cum owner for the restricted claim of Rs.2,00,000/-. Therefore, the award is reasonable and acceptable. This appeal lacks merits and it has to be dismissed.

5. Points for consideration

(i) Whether the appeal filed by the Insurance Company is maintainable.

(ii) Whether the award passed by the Tribunal has to be set aside.



6. Perused the claim petition filed by the Claimants/respondents before the Motor Accident Claims Tribunal in MCOP.No.711/2008, the counter filed by the Appellant/Insurance Company and the Judgment/Order passed by the Motor Accident Claims Tribunal and the Memorandum of appeal filed by the Appellant/Insurance Company.

7. On perusal of the award passed by the Motor Accident Claims Tribunal, it is found that the claim petition filed by the legal heirs of the owner of the vehicle is not maintainable. As the owner of the vehicle had not insured the vehicle, for owner's risk. It was taken only against the third party risk. Also the owner of the vehicle caused the accident and died on the spot. Therefore, this Court is of the considered view that as per insurance policy Rules, the claim petition is not maintainable. It is pertinent to rely on the decision of this Court reported in 2017 (2) TANMAC 674 (DB) (Rekha Vs. United India Insurance Co.), wherein at para 26 it had been 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 46 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."

WEB COPY

In view of the above decision of the Division Bench as the deceased himself was negligent while driving the vehicle and no other Motor Vehicle was involved in the accident, the point for consideration is answered in favour of the Insurance Company/appellant and against the claimants/respondents herein.

In the result, this Civil Miscellaneous Appeal is allowed. The Judgment and decree passed in MCOP.No.711 of 2008 by the learned Motor Accidents Claims Tribunal, Principal District Judge, Dharmapuri is set aside. No costs.

SD/-
ASSISTANT REGISTRAR

// TRUE COPY //

SUB ASSISTANT REGISTRAR

dh

To

The Principal District Judge,
Motor Accident Claims Tribunal,
Dharmapuri.

Copy to

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

+1cc to M/s.R.Sreevidya, Advocate Sr.40934
+1cc to Mr.V.Raghavachari, Advocate Sr.40248

C.M.A.No.2800 of 2011

gsm[col]
srg 14/12/2021