IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.09.2021

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THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A.No.2763 of 2016 &
CMP.No.19997 of 2016

The Manager,
United India Insurance Company Limited
Sillingi Building,
New No.134, Old No.40-45,
Greams Road,
Chennai – 600 006. ...Appellant/2nd Respondent

Vs

1.J.Banumathay ...1st Respondent/Petitioner
2.J.W.Jothi ...2nd Respondent/1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act against the Award dated 19th day of July, 2016 passed in MCOP.No.4900 of 2011 by the Motor Accident Claims Tribunal – In the III court of Small Causes, at Chennai.

For Appellant : Mr.J.Michael Visuvasam

For Respondent 1 : Ms.Ramya V.Rao

For Respondent 2 : No appearance

JUDGMENT

This civil miscellaneous appeal has been filed by the Insurance Company challenging the impugned award dated 19.07.2016 passed by the Motor Accident Claims Tribunal, Third Court of Small Causes, Chennai in MCOP.No.4900 of 2011.

2. The Appellant Insurance Company has primarily challenged the impugned award questioning its liability to pay the determined compensation. According to them, the deceased is not a third party and therefore, the Appellant Insurance is not liable to pay the compensation. Admittedly, the deceased Johnson who was the rider of the insured motor cycle bearing registration No.TN20-AP-0374 was none other than the son of the insured. The said fact has not been disputed by the first respondent/claimant before the Tribunal.

3. It is the case of the respondent/claimant that the deceased Johnson borrowed the vehicle from the owner of the vehicle (insured) when the accident happened which resulted in his death. Since it is an admitted fact that the deceased borrowed the vehicle from the owner of the vehicle (insured) who is none else than the father, the decision rendered by the Hon'ble Supreme Court in Ram Kiladi's Case reported in 2020 2 SCC 550 shall apply which holds that the borrower of the vehicle from the insured cannot be considered to be a third party.

4. Insofar as the personal accident coverage is concerned, no amount of compensation can be paid to the first respondent/claimant as the deceased has not satisfied the following conditions as per the insurance policy which has been marked as Ex.R1 before the Tribunal namely (a) the owner cum driver is the registered owner of the vehicle insured, (b) the owner cum driver of the insured named in the policy and (c) the owner cum driver holds an effective driving license in accordance with the provisions of law. However, under the impugned award, by total non-application of mind to the settled law, the Tribunal only on the ground that the subject vehicle was insured with the Appellant has directed the Appellant Insurance Company to pay the compensation. Infact, the insurance company is not liable to pay the same as per the settled law referred to supra. Hence, the impugned award dated 19.07.2016 passed by the Motor Accident Claims Tribunal (III Court of Small Causes, Chennai) in MCOP.No.4900 of 2011 against the Appellant Insurance Company will have to be necessarily set aside by this Court.

5. In the result, the impugned award dated 19.07.2016 passed by the Motor Accident Claims Tribunal (IIIrd Small Causes of Court, Chennai) in MCOP.No.4900 of 2011 is hereby set aside and the appeal is allowed. The Appellant Insurance company is permitted to withdraw the amount deposited by them to the credit of MCOP.No.4900 of 2011, before the Tribunal by filing an appropriate application. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

True Copy//

Sub Assistant Registrar

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To

1. The III Court of Small Causes,
   Chennai.

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

+1cc to Mr.J.Michael Visuvasam, Advocate, S.R.No.44388
+2ccs to Ms.Ramya V.Rao, Advocate, S.R.No.44472

C.M.A.No.2763 of 2016

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NSK 19/11/2021