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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.03.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.935 of 2021
and
C.M.P.No.5318 of 2021

National Insurance Company Limited,
No.66, Greams Road,
Murugesanaicker Complex,
Chennai - 600 006.

.. Appellant/2nd Respondent

Vs.

1.R.Nirmala

2.Minor. R.Dilli Babu

3.Minor. Parthiban

(Minor respondents 2 & 3 are represented by their Next
Friend and Mother, R.Nirmala, 1st respondent herein)

4.J.Varadhan

5.V.Jaya

... Respondents 1 to 5 / Claimants

6.R.Ramu

... 6th Respondent/1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 10.03.2020 made in M.C.O.P.No.1120 of 2019 on the file of the Motor Accidents Claims Tribunal, Chief Small Causes Court, Chennai.

For Appellant : Mr.D.Bhaskaran

J U D G M E N T

The matter is heard through "Video Conferencing/Hybrid mode".

2.This Civil Miscellaneous Appeal has been filed to set aside the award dated 10.03.2020 made in M.C.O.P.No.1120 of 2019 on the file of the Motor Accidents Claims Tribunal, Chief Small Causes Court, Chennai.

3.The appellant is the 2nd respondent in M.C.O.P.No.1120 of 2019 on the file of the Motor Accidents Claims Tribunal, Chief Small Causes Court, Chennai. The respondents 1 to 5 filed the



said claim petition under Section 163(A) of the Motor Vehicles Act, claiming a sum of Rs.20,00,000/- as compensation for the death of one Rajiv Gandhi, who died in the accident that took place on 21.07.2017.

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4. According to respondents 1 to 5, on 21.07.2017 at about 15.00 hours, while the deceased Rajiv Gandhi was driving the motorcycle bearing Registration No.TN 20 AH 5032 from VCR Kandigai to Tiruttani, a dog suddenly crossed the road and despite efforts taken by the said Rajiv Gandhi to avoid hitting the dog, lost control over the motorcycle, fell down on the road, sustained head injuries and died. Therefore, the respondents 1 to 5 filed the said claim petition under Section 163(A) of the Motor Vehicles Act claiming a sum of Rs.20,00,000/- as compensation for the death of the said Rajiv Gandhi against the 6th respondent and appellant-Insurance Company, being the owner and insurer of the motorcycle respectively.

5. The 6th respondent, being the owner of the motorcycle remained exparte before the Tribunal.

6. The appellant-Insurance Company, being the insurer of the motorcycle owned by 6th respondent filed counter statement and denied all the averments made by the respondents 1 to 5. The appellant has stated that the accident has occurred only due to the negligence on the part of the deceased and the Inspector of Police, D-1, Tiruttani Police Station, who investigated the case also filed final report/charge sheet stating that the accident has occurred only due to the negligence on the part of the deceased. The motorcycle driven by the deceased Rajiv Gandhi was borrowed from the 6th respondent by the deceased. The deceased being the borrower is not covered by the Insurance Policy No.39010231176200804369 issued by the appellant. The respondents 1 to 5 have to prove the age, avocation and income of the deceased. The quantum of compensation claimed by the respondents 1 to 5 is highly excessive and prayed for dismissal of the claim petition.

7. Before the Tribunal, 1st respondent examined himself as P.W.1 and 15 documents were marked as Exs.P1 to P15. The appellant-Insurance Company examined their official S.Ramadevi as R.W.1 and marked 4 documents as Exs.R1 to R4.

8. The Tribunal, considering the pleadings, oral and documentary evidence, held that the deceased died in the accident involving the 6th respondent's motorcycle and directed the appellant-Insurance Company to pay a sum of Rs.1,00,000/- as compensation to respondents 1 to 5.



9.To set aside the award dated 10.03.2020 made in M.C.O.P.No.1120 of 2019, the appellant has come out with the present appeal.

10.The learned counsel appearing for the appellant contended that the Tribunal erred in granting a sum of Rs.1,00,000/- with interest as compensation to the respondents 1 to 5, when the claim petition itself is not maintainable. The Tribunal failed to note that Personal Accident Coverage cases can only be tried in City Civil Court and not in Motor Accident Claims Tribunal and also failed to adjudicate the issue on maintainability and liability. The deceased is not the registered owner of the vehicle. The claim of Rs.1,00,000/- is not covered under Personal Accident claim. Personal Accident Coverage is applicable only to the registered owner of the vehicle. The deceased-rider of the motorcycle is not the registered owner. The Tribunal ought to have held that the respondents 1 to 5 are not entitled to any compensation even under the Personal Accident Coverage. According to terms of contract of insurance, the appellant is not liable to pay the award amount of Rs.1,00,000/- with interest. The question of paying interest also does not arise as there was no contract to pay the interest under the Personal Accident Coverage and the Tribunal ought to have dismissed the claim petition against the appellant and prayed for setting aside the award passed by the Tribunal.

11.Heard the learned counsel appearing for the appellant-Insurance Company and perused the entire materials on record.

12.From the materials available on record, it is seen that it is the case of the appellant that accident has occurred only due to the negligence on the part of the deceased. The deceased was a tortfeasor. No other vehicle was involved in the accident. The Tribunal considering the materials placed before it, held that accident occurred only due to fault of the deceased. After holding so, the Tribunal considering the payment of extra premium for Personal Accident Coverage for owner of the vehicle, awarded a sum of Rs.1,00,000/- as compensation to the respondents 1 to 5. It is the contention of the learned counsel appearing for the appellant that premium was collected for Personal Accident Coverage to cover the risk of registered owner and deceased is not the registered owner. The said contention is contrary to the judgment of the Hon'ble Apex Court reported in 2009 (2) TNMAC 169 (SC) [Ningamma & another v. United India Insurance Co. Ltd.], wherein it has been held that borrower of the two wheeler steps into the shoes of the owner of the vehicle and he is not entitled to maintain claim petition even under Section 163(A) of the Motor Vehicles Act, when he himself is the tortfeasor. In the judgment of the Hon'ble Apex Court reported



in 2020 (1) TNMAC 1 (SC), [Ramkhiladi and another Vs. United India Insurance Company Limited and another], referring to 2009 (2) TNMAC 169 (SC), [cited supra] Ningamma case, it has been held that rider of the two wheeler steps into the shoes of the owner and he is entitled to claim compensation under Personal Accident Coverage when the owner has paid additional premium for Personal Accident Coverage. In the present case, it is not the case of the appellant that the owner of the motorcycle - 6th respondent herein did not pay any additional premium for Personal Accident Coverage. The contention of the learned counsel appearing for the appellant that the respondents 1 to 5 are not entitled to compensation under Personal Accident Coverage as the deceased was not registered owner and compensation for Personal Accident claim can be decided only before the Civil Court are contrary to the judgments of the Hon'ble Apex Court referred to above. In the judgment of the Hon'ble Apex Court reported in 2017 (2) TNMAC 674 (DB), [Divisional Manager, United India Insurance Company Limited Vs. R.Rekha and others], it has been held that when additional premium is paid for Personal Accident Coverage, Insurance Company is liable to pay maximum of Rs.1,00,000/- in case of two wheeler and Rs.2,00,000/- in case of four wheeler. The said issue has been decided in the judgments referred to above. Further, the contention of the learned counsel appearing for the appellant that the respondents 1 to 5 are not entitled to interest for the amounts awarded under Personal Accident Coverage as prescribed in the contract to that effect is without merits. The Hon'ble Apex Court in the judgments reported in 2009 (2) TNMAC 169 (SC) and 2020 (1) TNMAC 1 (SC), [cited supra] has granted 9% and 7.5% interest per annum respectively for the amount paid under Personal Accident Coverage. In view of the above judgments, the respondents 1 to 5 are entitled to interest for the amount awarded under Personal Accident Coverage. For the above reason, there is no error in the award of the Tribunal warranting interference by this Court.

13. In the result, this Civil Miscellaneous Appeal is dismissed and a sum of Rs.1,00,000/- awarded by the Tribunal as compensation to the respondents 1 to 5, along with interest and costs is confirmed. The appellant-Insurance Company is directed to deposit the award amount along with interest and costs, less the amount if any already deposited, within a period of six weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P.No.1120 of 2019 on the file of the Motor Accidents Claims Tribunal, Chief Small Causes Court, Chennai. On such deposit, the respondents 1, 4 & 5 are permitted to withdraw their respective share of the award amount as per the ratio of apportionment fixed by the Tribunal along with proportionate interest and costs after adjusting the amount, if any already



withdrawn, by filing necessary applications before the Tribunal. The share of the minor respondents 2 & 3 are directed to be deposited in any one of the Nationalized Banks, till the minor respondents 2 & 3 attain majority. On such deposit, the 1st respondent, being the Mother of the minor respondents 2 & 3 is permitted to withdraw the accrued interest once in three months for the welfare of the minor respondents 2 & 3. Consequently, the connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Chief Judge,
Motor Accidents Claims Tribunal,
Small Causes Court,
Chennai.
2. The Section Officer,
VR Section,
High Court,
Madras.

C.M.A.No.935 of 2021

RSV (CO)
K.RK. (29.10.2021)