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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.11.2021

CORAM :

THE HONOURABLE MRS.JUSTICE S.KANNAMMAL

C.M.A.NO.658 OF 2018

Nagajothi

... Appellant/Petitioners

Versus

1. S.Sikkanan

2. The United India Insurance
Company Limited,
Sillingi Building,
New No.134, Old No.40-45,
Greens Road,
Chennai - 600 006.

... Respondents/Respondents

PRAYER:-

Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree dated 05.07.2016 passed in M.C.O.P.No.5687 of 2011 on the file of the Motor Accidents Claims Tribunal IV Judge, Small Causes Court, Chennai.

For Appellant : Mrs.Ramya V.Rao

For R2 : Mr.P.Sankara Narayanan

JUDGMENT

This appeal is filed by the claimant in MCOP No. 5687 of 2011, aggrieved by the Judgment and Decree dated 05.07.2016 passed by the Tribunal, thereby dismissing her claim petition without awarding any compensation.

2. The claimant is the mother of the deceased Subbiah, who was 27 years at the time of his death. The first respondent is the father of the deceased, who is also the owner of the vehicle driven by the deceased at the time of his death. The second respondent-Insurance Company is the insurer with which the two wheeler was insured. Even according to the appellant-claimant,



on 10.01.2011 when the deceased was driving the two wheeler Motor Cycle bearing Registration No. TN 57 P 1770 and proceeding beneath the Padi Over bridge, he fell down on his own, sustained grievous injury and declared brought dead by the Doctor attached to the Government General Hospital, Chennai - 600 003. According to the claimant, the deceased was working as Service Engineer (EBS Box-Telephone) with M/s. Digital Fine System, Ashok Nagar, Chennai and was earning Rs.3,300/- per month. By reason of his death, it is contended that the claimant lost the bread winner in the family. Therefore, the claimant filed the claim petition claiming a sum of Rs.10 lakhs as compensation from the respondents.

3. The claim petition was resisted by the second respondent-Insurance Company by contending that due to his own negligence, the deceased fell down and died due to the injuries caused to him. There was no other motor vehicle involved in the accident. The deceased is not a third party to the vehicle and he was driving the two wheeler. Though the first respondent-father of the deceased is the owner, at the time of accident, when there was no other motor vehicle involved, the deceased cannot be construed as a third party to the policy of insurance. Therefore, the Insurance Company prayed for dismissal of the claim petition.

4. Before the Tribunal, the appellant-claimant examined herself as PW1 and marked Exs. P1 to P7. On behalf of the respondents, one Mr. Ilango was examined as RW1 and copy of the charge sheet was marked as Ex.R1. The Tribunal, on considering the oral and documentary evidence, concluded that the deceased, due to his own negligence, fallen down from the two wheeler and died. While so, the Insurance Company cannot be mulcted with any liability to pay the compensation. Accordingly, the Tribunal refused to award any compensation and dismissed the claim petition.

5. The learned counsel for the appellant vehemently contended that the first respondent is the owner of the two wheeler, and on the fateful day, it was driven by the deceased, who is the son of the owner and therefore, the deceased has to be construed as a third party to the policy of insurance. It is further contended that as per Section 163 (A) of Motor Vehicles Act, 1988 as inserted by amending Act 54 of 1994, the claimant is entitled for compensation from the Insurance Company, but the Tribunal erroneously dismissed the claim petition. Further, in the case of United India Insurance Company vs. Sunil Kumar and another, 2013 (2) TNMAC 737 (SC), it was held that claim under Section 163 (A) of The Motor Vehicles Act, shall not be defeated by the Insurance Company or vehicle owner for the reason of any wrongful act, neglect or default of the victim and the Insurance



Company cannot make such defence and hence, the Tribunal ought to have directed the Insurance Company to pay compensation.

6. On the other hand, the learned counsel for the Insurance Company contended that even in the claim petition, it was admitted that the deceased fell down on his own. The negligence is entirely attributable on the part of the deceased, and the owner of the vehicle in this case was none other than the father of the deceased and who was impleaded as first respondent in the claim petition. While so, the Insurance Company cannot be mulcted with the liability to pay compensation and he prayed for dismissal of the appeal.

7. Admittedly, on the fateful day viz., 10.01.2011, the deceased, while driving his father's two wheeler - fell down on his own and died to the injuries he sustained thereof. There is no other motor vehicle involved in the accident. The deceased cannot be construed as a third party to the insurance policy and therefore, the claimant cannot claim any compensation from the Insurance Company. Even though the claim petition was filed under Section 163A of The Motor Vehicles Act, in this case, even as per the claim petition, the deceased fell down on his own and died due to the injuries sustained thereof. Therefore, the Insurance Company cannot be directed to pay compensation to the claimant-appellant. It is evidently clear that the deceased died due to his own negligence and therefore, when the deceased himself is the tort-feasor, the Insurance Company cannot be directed to pay any compensation. The two wheeler of the deceased is insured with the second respondent Insurance Company and for the own negligence of the deceased himself, compensation cannot be directed to be paid by the Insurance Company.

8. The Division Bench of this Court, in the case of Divisional Manager, United Insurance Company Limited vs. Rekha and others reported in 2017 5 Law Weekly 300 had an occasion to consider an identical case. In that case, the deceased was riding pillion in a two wheeler. The driver of the two wheeler hit a cyclist. The deceased fell down and died. The legal heirs of the deceased filed the claim petition and the Tribunal awarded a sum of Rs.51,37,125/- as compensation. The Division Bench set aside the award passed by the Tribunal and directed the appellant-Insurance Company to pay a sum of Rs.1 lakhs towards Personal Accident Coverage. The judgment of the Division Bench is extracted hereunder:-

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



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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.

9. Further, in a decision reported in Ramkhiladi vs. The United India Insurance Company and others in Civil Appeal No.9393 of 2019, the Hon'ble Supreme Court has observed that

"while the deceased may not be considered a third party in case of the insured vehicle due to their employment status under the owner of the aforementioned vehicle, there was no proper evidence on record to support the fact that the deceased was acting under the service of the owner of the insured vehicle at the time of the accident.

In addition to that, the Supreme Court upheld the judgement of the case Ningamma vs. United India Insurance Co. Ltd, where the Court had held that the claimant cannot maintain the claim under Section 163A of Motor Vehicle Act, 1988 due to the deceased stepping into the shoes of the owner during the accident - as rightly held by the High Court before as well.



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The Supreme Court also recognised the fact that there is no need to prove the fault of the driver, or any vehicles concerned in the case for the claim petition; however, the fact that only a third party can seek compensation under Section 163A of the aforementioned Act cannot be disputed. The Court also reasoned that the liabilities of the insurance company would extend as far as the contract between the company and the owner allows - and the contract in this case only mentions compensation for the third party."

10. The facts in the case on hand is squarely covered by the decision of the Division Bench of this Court mentioned supra. Therefore, following the decision of the Division Bench of this Court, the Judgment and Decree dated 05.07.2016 passed in M.C.O.P.No.5687 of 2011 on the file of the Motor Accidents Claims Tribunal IV Judge, Small Causes Court, Chennai is set aside. The second respondent - Insurance Company is directed to pay a sum of Rs.1 lakh (Rupees One Lakh Only) as compensation to the claimant towards Personal Accident Cover proportionate to the premium paid by the owner of the vehicle. The Insurance Company shall deposit the amount of Rs.1 lakh with interest at the rate of 7.5% per annum from the date of filing the claim petition till the date of deposit. Such amount shall be deposited within a period of 12 weeks from the date of receipt of a copy of this judgment.

11. With the above observation, the Civil Miscellaneous Appeal is disposed of. No costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

gbi

To

The IV Judge,
The Motor Accidents Claims Tribunal,
The Small Causes Court,
Chennai.

C.M.A.NO.658 OF 2018

SRA(CO)
PBS/21/04/2022