IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	22.04.2021
Pronounced On	28.04.2021

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

C.M.A.No1673 of 2020
and
C.M.P.No.12318 of 2020

(Through Video Conferencing)

National Insurance Company Limited,
Represented by its Branch Manager,
Branch Officer at Anuradha Complex,
3rd Floor, No.333, Bangalore Road,
Opposite Raja Theatre,
Krishnagiri - 635 001.
... Appellant/Respondent

Vs.

1.Nandhini

2.Minor. Madhu Sri

3.Minor. Sri Sha

4.Latchumi
... Respondents/Petitioners

(Minor 2nd and 3rd respondents are rep. by their Next friend / mother 1st respondent)

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 19.02.2020 made in M.C.O.P.No.553 of 2019 on the file of the Motor Accidents Claims Tribunal (Special District Court), Krishnagiri.

For Appellant : Mr.D.Bhaskaran

For Respondents : No appearance

J U D G M E N T

Though the notice has been served on the respondents, there is no representation on behalf of them.

2. Insurance Company is the appellant in this Civil Miscellaneous Appeal. It is aggrieved by the impugned Judgment and Decree dated 19.02.2020 passed by the Motor Accidents Claims Tribunal (Special District Court for Motor Accident Claims Cases, Krishnagiri), Krishnagiri in M.C.O.P.No.533 of 2019.

3. By the impugned Judgment and Decree dated 19.02.2020, the Tribunal has awarded a sum of Rs.5,11,366/- as compensation together with interest at 7.5% per annum from the date of claim petition till the date of deposit to the respondents.

4. The appellant Insurance Company has filed this appeal primarily on the ground that the claim petition was filed under Section 163-A of the Motor Vehicles Act, 1988 by the dependents of the deceased who was a tortfeasor himself and therefore, liability cannot be fixed on the appellant Insurance Company under the policy. It is submitted that at best, as per Ex.R3 Insurance Policy, the liability that can be fastened in case of a death of the owner-cum-driver meeting an accident could be limited to Rupees one lakh in a case of P.A. cover. In this connection, a reliance was plaaced on the decision of the Hon'ble Supreme Court in National Insurance Company Limited Vs. Ashalata Bhowmik and Others, 2018 (9) SCC 801 : 2018 (2) TN MAC 286 (SC).

5. The learned counsel for the appellant Insurance Company further submits that pursuant to the directions and observations of this Court in United India Insurance Co. Ltd. Vs. R.Rekha and Others in C.M.A.No.1428 of 2017 vide its Judgment dated 26.10.2017, IRDAI has also issued a Circular dated 20.09.2018 bearing reference No. IRDAI/NL/CIR/MOTP/158/09/2018, wherein, it has been clarified as follows:-

> 4. In accordance with the above directions of the Hon’ble High Court of Judicature at Madras, the Authority, in exercise of the powers conferred by Section 14(2)(i) of the IRDA Act 1999 and in consultation with the stakeholders, hereby issues the following modifications to General Regulation (GR) -36 of India Motor Tariff, 2002 on Compulsory Personal Accident Cover for Owner-Driver.

(i) All General Insurers carrying on motor insurance business shall provide CPA Cover for Owner-Driver under Liability Only, under Section III of Package Policies to all classes of vehicles and Bundled Covers wherever applicable.

(ii) A minimum Capital Sum Insured (CSI) of Rs.15,00,000/- shall be provided under CPA Cover for Owner-Driver under Liability Only, under Section III of Package Policies to all classes of vehicles and Bundled Covers wherever applicable at the premium rate of Rs. 750/- per annum for annual policy. This rate will be valid until further notice.

(iii) A higher CSI may be provided over and above Rs.15,00,000/- through Optional Covers under Liability Only and under Section III of Package Policies/ Bundled Covers on payment of additional premium at the option of the Insured.

(iv) In view of the above changes, the current Add on covers offering enhanced CPA Cover for Owner-Driver under Section III of Package Policies and Bundled Covers up to CSI of Rs.15,00,000/- shall stand withdrawn. However, Insurers willing to offer CSI over and above Rs.15,00,000/- may revise/file Add on cover under Liability only, Package Policies and Bundled Covers. It is suggested the higher CSI in such Add on cover may be in multiples of Rs.1,00,000/-. or Rs.5,00,000/-.

(v). As regards premium payable for CPA cover under long term motor policies, insurers may price them in line with their current approach for pricing. Should the Authority find the pricing approach in variance from their general pricing philosophy/approach and not in line with actuarial principles, suitable direction may be issued by the Authority. Insurers may start issuing such covers effective from the date of receipt of this circular even while ensuring that the filing for these is done under File and Use Guidelines on or before 25th October, 2018.

(vii). All other extant provisions applicable for Motor Third Party Insurance shall continue to apply.

> This Circular shall come into effect immediately. Please acknowledge this circular and confirm having noted its contents.
>
> This is issued with the approval of the competent authority.

6. The learned counsel for the appellant Insurance Company drew my attention to Ex.P4/R3 Insurance Policy which clearly restricts the liability of the Insurance company in case of death to Rupees One Lakh. He further submitted that the policy was valid between 03.02.2018 and 02.02.2019. The accident took place on 08.06.2018. The amendment to the policies to be issued was based on the decision of this Court in United India Insurance Co. Ltd. Vs. R.Rekha and Others in C.M.A.No.1428 of 2017 vide its Judgment dated 26.10.2017

7. In National Insurance Company Limited Vs. Ashalata Bhowmik and Others, 2018 (9) SCC 801 : 2018 (2) TN MAC 286 (SC), the Hon'ble Supreme Court held as follows:-

> 9. Therefore, the High Court was not justified in directing the appellant insurer to pay the compensation determined by the Tribunal. Since the indemnification extended to personal accident of the deceased is limited to Rs 2,00,000 under the contract of insurance, the respondents are entitled for the said amount towards compensation. Hence, the appellant is directed to deposit the said sum of Rs 2,00,000 with interest @ 9 per cent p.a. from the date of the claim petition till the date of deposit with the Tribunal within a period of four weeks from today.

8. Guidelines was issued on 25.10.2018. It was stated that the amendment to coverage was with effect from 01.01.2019. It is therefore submitted that enhancement of compensation in case of Personal Accident Cover for a sum of Rs.15,00,000/- will apply only under new policies issued with effect from 01.01.2019. It is submitted that contract liability was limited for a sum of Rs.1,00,000/-. It was therefore prayed for allowing this appeal to that extent.

9. In Ramkhiladi and Another Vs. United India Insurance Company Limited and Another, (2020) 2 SCC 550 : 2020 SCC OnLine SC 10, the Hon'ble Supreme Court held as under:-

9.8. However, at the same time, even as per the contract of insurance, in case of personal accident the owner-driver is entitled to a sum of Rs 1 lakh. Therefore, the deceased, as observed hereinabove, who would be in the shoes of the owner shall be entitled to a sum of Rs 1 lakh, even as per the contract of insurance. However, it is the case on behalf of the original claimants that there is an amendment to the 2nd Schedule and a fixed amount of Rs 5 lakh has been specified in case of death and therefore the claimants shall be entitled to Rs 5 lakh. The same cannot be accepted. In the present case, the accident took place in the year 2006 and even the judgment and award was passed by the learned Tribunal in the year 2009, and the impugned judgment and order has been passed by the High Court in 10-5-2018 [United India Insurance Co. v. Ramkhiladi, 2018 SCC OnLine Raj 3264] i.e. much prior to the amendment in the 2nd Schedule. In the facts and circumstance of the present case, the claimants shall not be entitled to the benefit of the amendment to the 2nd Schedule. At the same time, as observed hereinabove, the claimants shall be entitled to Rs 1 lakh as per the terms of the contract of insurance, the driver being in the shoes of the owner of the vehicle.

10. The amendment to the II Schedule to the Motor Vehicles Act, 1988 was notified by the Ministry of Road and Transport on 22.05.2018 vide S.O.2022 (E). Thus, the claim under Section 163-A of the Act, in case of death, was enhanced to Rs.5,00,000/-.

11. In the light of the above observations, I find merits in this submission of the learned counsel for the appellant Insurance Company. Therefore, this Civil Miscellaneous Appeal is liable to be partly allowed.

12. The appellant Insurance Company is therefore directed to deposit a sum of Rs.1,00,000/- together with interest at 7.5% per annum from the date of claim petition till the date of deposit, less amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this Judgment.

13. The appellant Insurance Company is also entitled to

refund the amount deposited in excess of the amount of compensation of Rs.1,00,000/-, if any, together with interest thereon, by filing suitable application before the Tribunal.

14. On such deposit, the respondents are entitled to the compensation in the same proportion awarded by the Tribunal. The first and fourth respondents are permitted to withdraw their respective shares together with interest, less any amount already withdrawn by them, by filing suitable application before the Tribunal.

15. Since the second and third respondents are minors, their share shall be deposited in any one of the Nationalised Bank under reinvestment scheme till they attain the age of majority. The first respondent, who is the guardian of the minors, is permitted to withdraw the accrued interest from the minor's deposit once in three months directly from the said Bank. On attaining majority, the second and third respondents are to be permitted to withdraw their share, by filing suitable application before the Tribunal.

16. This Civil Miscellaneous Appeal is partly allowed with the above observations. No cost. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Deputy Registrar(CS)

//True Copy//

Sub Assistant Registrar

jen

To

Motor Accidents Claims Tribunal
(Special District Court),
Krishnagiri.

Copy to:
The Section Officer,
V.R.Section,
High Court, Madras.

Judgment made in
C.M.A.No.1673 of 2020 and
C.M.P.No.12318 of 2020

PA(CO)
SU(08/11/2021) (17/11/2021)