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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.03.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.NO.1723 OF 2020

AND

C.M.P.NO.12759 OF 2020

M/s. United India Insurance Company Limited,
No.134, Greams Road,
Thousand Lights,
Chennai - 600 006.

.. Appellant/
2nd Respondent

Vs.

1.M.Bakiavathi

2.M.Mohan

3.Minor.M.Yokesh

(Minor 3rd respondent represented by
his Mother and Natural Guardian
M.Bakiavathi, 1st respondent herein)

4.C.Devaki

... 1 to 4th Respondent/
1 to 4th Petitioner

5.Mani

.. 5th 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 11.11.2019 made in M.C.O.P.No.1271 of 2016 on the file of the Motor Accidents Claims Tribunal, II Small Causes Court, Chennai.

For Appellant : Mr.J.Michael Visuvasam
For RR 1 to 4 : Mr.S.Udhayakumar

J U D G M E N T

This Civil Miscellaneous Appeal has been filed to set aside the award dated 11.11.2019 made in M.C.O.P.No.1271 of 2016 on the file of the Motor Accidents Claims Tribunal, II Small Causes Court, Chennai.

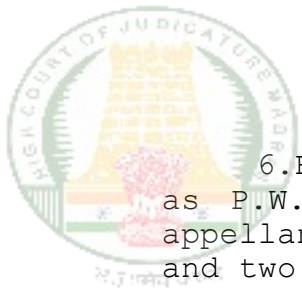


2.The appellant is the 2nd respondent in M.C.O.P.No.1271 of 2016 on the file of the Motor Accidents Claims Tribunal, II Small Causes Court, Chennai. The respondents 1 to 4 filed the said claim petition, claiming a sum of Rs.5,00,000/- as compensation for the death of one Mani, who died in the accident that took place on 01.10.2012.

3.According to respondents 1 to 4, on 01.10.2012 at about 09.30 P.M., the deceased Mani was riding the motorcycle bearing Registration No.TN 18 Z 4464 on the Thiruverkadu - Ambathur road. While he was nearing Thiruverkadu, there was no street light in that area and some Bullock Carts were standing in the middle of the road. The deceased Mani noticed the Bullock Carts only when he was nearing them. Immediately on seeing the Bullock Carts, the said Mani applied sudden brake, fell down and sustained head injury. In spite of treatment, the said Mani succumbed to injuries in the Hospital. Therefore, the respondents 1 to 4 filed the said claim petition claiming a sum of Rs.5,00,000/- as compensation against the 5th respondent Mani and appellant-Insurance Company, being the owner and insurer of the motorcycle respectively.

4.The 5th respondent-owner of the motorcycle being dead remained exparte before the Tribunal.

5.The appellant-Insurance Company, being the insurer of the motorcycle filed counter statement and denied all the averments made by the respondents 1 to 4. According to the appellant, the claim petition itself has been strangely filed for the death of 5th respondent, who himself was the owner of the motorcycle bearing Registration No.TN 18 Z 4464. The 5th respondent is not a Third Party and hence, the claim petition filed by the respondents 1 to 4 is not maintainable. As per F.I.R. in Crime No.1364/PH2/2012 on the file of the Poonamallee Traffic Police Station, it is found that the deceased fell down from his own motorcycle and due to the same, this is a case of 'self-fall' and hence, the claim petition is not maintainable under Section 166 of the Motor Vehicles Act. The respondents 1 to 4 cannot be considered as third party as they are the legal heirs of the deceased, who is the 5th respondent. The respondents 1 to 4 have to prove that the 5th respondent's motorcycle was insured with the appellant at the time of accident vide policy number 012001/31/12/01/00004392 from 15.06.2012 to 14.06.2013 by producing valid documents. The appellant denied the manner of accident, age, avocation and income of the deceased. The respondents 1 to 4 have to prove that they are the legal heirs of the deceased and also the deceased was possessing valid driving license at the time of accident. In any event, the quantum of compensation claimed by the respondents 1 to 4 is highly excessive and prayed for dismissal of the claim petition.



6. Before the Tribunal, the 1st respondent examined herself as P.W.1 and 13 documents were marked as Exs.P1 to P13. The appellant-Insurance Company examined one B.Senthilvel as R.W.1 and two documents were marked as Exs.R1 & R2.

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7. The Tribunal considering the pleadings, oral and documentary evidence held that the accident occurred only due to rash and negligent riding by the rider of the motorcycle belonging to 5th respondent and directed the appellant to pay a sum of Rs.1,00,000/- as compensation to the respondents 1 to 4.

8. Against the said award dated 11.11.2019 made in M.C.O.P.No.1271 of 2016, the appellant has come out with the present appeal.

9. The learned counsel appearing for the appellant contended that the Tribunal failed to see that claim petition against a dead person is not maintainable. The respondents 1 to 4 herein who are the legal heirs of the 5th respondent filed claim petition against the 5th respondent and appellant for claiming compensation for the death of 5th respondent. The 5th respondent is a tortfeasor. The respondents 1 to 4 who are the legal heirs of the tortfeasor are not entitled to claim compensation from the appellant. The deceased is not a third party. The Tribunal without Jurisdiction, entertained the claim petition and held that claim petition is maintainable. The Tribunal having found that deceased is not a third party, ought to have dismissed the claim petition. The Tribunal erred in holding that respondents 1 to 4 are entitled to claim compensation under contractual liability. The Tribunal failed to see that respondents 1 to 4 did not approach the appellant for payment of Rs.1,00,000/- under Personal Accident coverage. In view of the same, the award of the Tribunal directing the appellant to pay the interest for Rs.1,00,000/- payable under Personal Accident coverage is erroneous. In support of his contention, the learned counsel relied on the following judgments and prayed for setting aside the award of the Tribunal:

(i) Judgment of the Hon'ble Apex Court reported in 2008 (2) TNMAC 336 (SC), [Oriental Insurance Company Limited Vs. Rajni Devi & others], wherein the Hon'ble Apex Court at paragraph Nos.2, 7 & 11 held as follows:

"...2. Respondent filed an application under Section 163-A of the Motor Vehicles Act, 1988 (the Act) claiming compensation for death of one Janak Raj (the deceased). He was riding on a motorcycle along with one Sukhdev Raj. Who was actually on the driver's seat is not known. The motorcycle



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is said to have gone out of control resulting in the accident.

7. The Tribunal, in our opinion, therefore, was not correct in taking the view that while determining the amount of compensation, the only factor which would be relevant would be merely the use of the motor vehicle. Section 163-A reads thus :

163A. Special provisions as to payment of compensation on structured formula basis -

(1) Notwithstanding anything contained in this Act or in any other law for the time being in force or instrument having the force of law, the owner of the motor vehicle of the authorised insurer shall be liable to pay in the case of death or permanent disablement due to accident arising out of the use of motor vehicle, compensation, as indicated in the Second Schedule, to the legal heirs or the victim, as the case may be.

Explanation.:- For the purposes of this sub-section, "permanent disability" shall have the same meaning and extent as in the Workmen's Compensation Act, 1923 (8 of 1923).

(2) In any claim for compensation under sub-section (1), the claimant shall not be required to plead or establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act or neglect or default of the owner of the vehicle or vehicles concerned or of any other person.

(3) The Central Government may, keeping in view the cost of living by notification in the Official Gazette, from time to time amend the Second Schedule."

The said provision cannot be said to have any application in regard to an accident wherein the owner of the motor vehicle himself is involved. The question is no longer res integra.



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11. According to the terms of contract of insurance, the liability of the insurance company was confined to Rs.1,00,000/- (Rupees one lac only). It was liable to the said extent and not any sum exceeding the said amount."

(ii) Division Bench judgment of this Court reported in 2017 (2) TNMAC 674 (DB), [Divisional Manager, United India Insurance Company Limited Vs. R.Rekha and others], wherein the Division Bench of this Court at paragraph No.29 held as follows:

"29. In the result, the Civil Miscellaneous Appeal is partially allowed. The award and decree dated 28.04.2015 made in M.C.O.P. No. 66 of 2011 on the file of Motor Accidents Claims Tribunal, Subordinate Judge, Neyveli is set aside. No costs. It is made clear that the claimants/respondents are only entitled for a sum of Rs.1,00,000/- towards Compulsory Personal Accident Coverage as per the terms and conditions of the Insurance policy, Ex.P5."

(iii) Judgment of this Court passed in C.M.A.No.2434 of 2019 dated 02.09.2020, [M/s. The Cholamandalam General Insurance Company Limited Vs. Ramesh Babu], wherein this Court at paragraph No.37, held as follows:

"37. This being the distinct factors, which are to be ascertained with reference to the nature of Insurance Policy, all the Tribunals are bound to look into the nature of the Policy at the first instance, before entertaining the Claim Petition. The Litigants should not be unnecessarily driven to various Courts by waiting for a long period before the Accident Claims Tribunal. Whenever a Claim Petition is filed, either under Section 166 or under Section 163-A of the Act or otherwise, the entertainability as well as the maintainability of the Claim Petitions are to be verified with reference to the nature of the policies issued by the Insurance Company. Contrarily, the Tribunal cannot adjudicate the terms and conditions agreed between the parties in a contract and grant



compensation by invoking the provisions under the Motor Vehicles Act."

10. Per contra, Mr. S. Udhayakumar, learned counsel appearing for the respondents 1 to 4 submitted that deceased paid additional premium of Rs.50/- for Personal Accident coverage and respondents 1 to 4 are entitled to compensation of Rs.1,00,000/- and respondents 1 to 4 are entitled to interest under Personal Accident coverage. In support of his contention, he relied on the following judgments:

(i) Judgment of the Hon'ble Apex Court reported in 2018 ACJ 2825, [National Insurance Company Limited Vs. Ashalata Bhowmik and others], wherein the Hon'ble Apex Court at paragraph No.9, 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 per annum from the date of the Claim Petition till the date of deposit with the Tribunal within a period of four weeks from today."

(ii) 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], wherein the Hon'ble Apex Court at paragraph Nos.5.9 & 6, held as follows:

"5.9 Now, so far as the submission made on behalf of the claimants that in a claim under Section 163A of the Act mere use of the vehicle is enough and despite the compensation claimed by the heirs of the owner of the motorcycle which was involved in the accident resulting in his death, the claim under Section 163A of the Act would be maintainable is concerned, in view of the decision of this Court in Rajni Devi (supra), the aforesaid cannot be accepted. In Rajni Devi (supra), it has been specifically observed and held that the provisions of Section 163A of the Act



there was no light in that area and when he saw the Bullock Carts in the road, he suddenly applied the brake, fell down and sustained injuries. In spite of treatment, the said Mani succumbed to injuries. The respondents 1 to 4 filed claim petition showing the deceased as 1st respondent and appellant as 2nd respondent under Section 166 of the Motor Vehicles Act. The Tribunal considering the pleadings, oral and documentary evidence, held that accident occurred only due to the negligence on the part of the deceased. The Tribunal after holding that deceased died due to his own negligence, has not awarded any compensation as claimed by the respondents 1 to 4. The Tribunal considering Ex.R2/policy issued by the appellant, found that deceased has paid a sum of Rs.50/- as additional premium towards Personal Accident coverage. In view of the payment of additional premium towards Personal Accident coverage, the Tribunal held that appellant is liable to pay a sum of Rs.1,00,000/- as compensation as per the contract to the respondents 1 to 4. On such finding, the Tribunal directed the appellant to pay a sum of Rs.1,00,000/- together with interest at the rate of 7.5% per annum fixed from the date of numbering of the petition, i.e., from 22.02.2016 till the date of realization and with costs.

13. The deceased paid a sum of Rs.50/- as additional premium for Personal Accident coverage. Such additional payment of premium is not disputed by the appellant. In the judgment reported in 2008 (2) TNMAC 336 (SC) and 2017 (2) TNMAC 674 (DB), cited supra, relied on by the learned counsel appearing for the appellant and the two judgments viz., 2018 ACJ 2825 and 2020 (1) TNMAC 1 (SC), cited supra, relied on by the learned counsel appearing for the respondents 1 to 4, it had been held that when the owner paid additional premium for Personal Accident coverage, Insurance Company is liable to pay the compensation of Rs.1,00,000/- for the death of rider of two wheeler and Rs.2,00,000/- for the death of driver of four wheeler. The judgment dated 02.09.2020 made in C.M.A.No.2434 of 2019 is not applicable to the facts of this case. In the said judgment, the judgment of Division Bench of this Court and Hon'ble Apex Court were not considered. The contention of the learned counsel appearing for the appellant that appellant is liable to pay only a sum of Rs.1,00,000/- and Tribunal erred in awarding interest is not acceptable. The Hon'ble Apex Court in the judgments reported in 2018 ACJ 2825 and 2020 (1) TNMAC 1 (SC), cited supra, relied on by the learned counsel appearing for the respondents 1 to 4, granted interest at the rate of 9% and 7.5% respectively when compensation is awarded under Personal Accident coverage. In view of the ratio in the above two judgments, there is no error in the award of the Tribunal granting interest. The appellant is liable to pay the interest on Rs.1,00,000/- from the date of claim petition till the date of deposit.



14. 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 4, 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.1271 of 2016 on the file of the Motor Accidents Claims Tribunal, II Small Causes Court, Chennai. On such deposit, the respondents 1, 2 & 4 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 3rd respondent is directed to be deposited in any one of the Nationalized Banks, till the minor 3rd respondent attains majority. On such deposit, the 1st respondent, being the Mother of the minor 3rd respondent is permitted to withdraw the accrued interest once in three months for the welfare of the minor 3rd respondent. Consequently, the connected Miscellaneous Petition is closed. No costs.

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To

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

Copy To

The Section Officer,
VR Section, High Court,
Madras.

+1cc to Mr.J.Michael Visuvasam, Advocate, S.R.No.17242

+1cc to Mr.S.Udhayakumar, Advocate, S.R.No.17797

C.M.A.No.1723 of 2020

SRA(CO)
CS/08/10/2021