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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 22.07.2021

Judgment Delivered on : 21.09.2021

Coram :

THE HONOURABLE MRS. JUSTICE S. KANNAMMAL

C.M.A. No. 2901 of 2014

1. Thangaiyan
2. Selvi
3. Ranjani
4. Raj Mohan

.. Appellants/Petitioners

Versus

1. Nagarajan
2. The New India Assurance Company Limited
rep. by its Branch Manager
T.S. No. 1817, Neela South Street
Nagapattinam

.. Respondents/Respondents

Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the fair and decreetal order dated 02.04.2014 passed in MCOP No. 257 of 2013 on the file of the Motor Accidents Claims Tribunal (District Court) Nagapattinam.

For Appellants	:	Mr. S. Sounthar
For Respondents	:	Mr. C. Ramesh Babu for R2

JUDGMENT

The claimants in MCOP No. 257 of 2013 before the Motor Accidents Claims Tribunal (District Court) Nagapattinam are the appellants in this appeal. They have filed the aforesaid MCOP No. 257 of 2013 claiming a sum of Rs.15 lakhs as compensation for the death of the deceased Rajasekar in an accident, while driving the two wheeler. The Tribunal, after examination of the oral and documentary evidence refused to award any compensation and dismissed the claim petition. Aggrieved by the same, the present appeal is filed.

2.As per the claim petition, on 21.04.2012, the deceased Rajasekar was driving the Yamaha motor cycle bearing Registration No. TN 51 C 3199 at Vidhiyur, Ganapathipuram Main Road. When he was reaching a place called Seshamoolai, near



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Gundumani Chathiram, one Sakthivel was riding his bicycle along with one Nagaiyan as his pillion rider and the cyclist suddenly crossed the road, with the result, the two wheeler driven by the deceased hit them. In the impact, the deceased Rajasekar sustained grievous injuries and he was taken to Tanjore Medical College Hospital, Tanjore, but he died on the way to hospital. In connection with this accident, a case in Crime No. 131 of 2012 was registered as against the deceased himself for his negligent and rash driving. It is claimed that the deceased was aged 19 years, working as a Mason and earning a sum of Rs.400 to Rs.500/- per day. According to the claimants, they have lost one of the bread winners in their family, therefore, for the death of the deceased, the claim petition was filed by his parents, brother and sister claiming compensation.

3.The Insurance Company resisted the claim petition mainly on the ground that there is no other motor vehicle involved in the accident. The deceased cannot be construed as a third party to the insurance policy. The accident had occurred due to the rash and negligent driving of the deceased himself. The claimants cannot claim compensation from the Insurance Company when the deceased himself was negligent in driving the two wheeler. The Insurance Company also placed reliance on the first information report registered against the deceased by Thittahcerry Police Station to conclude that it was the deceased who, due to his negligent driving, hit a cyclist and died. The Insurance Company therefore prayed for dismissal of the claim petition.

4.Accepting the plea of the respondent/Insurance Company, the Tribunal dismissed the claim petition by holding that the deceased had hit a cyclist while driving a two wheeler. When there is no other motor vehicle involved in the accident, the Insurance Company, with which the deceased insured his two wheeler, cannot be mulcted with liability to pay compensation to the claimants. The deceased cannot be treated as a third party to the policy of insurance. The Tribunal therefore concluded that the deceased himself was negligent in driving the two wheeler, hit a cyclist, fell down and invited the accident. While so, the claimants are not entitled for any compensation.

5.Assailing the order dismissing the claim petition, the learned counsel for the appellants would contend that the Insurance Policy taken by the deceased is a comprehensive policy which covers driver, owner and occupants and therefore the claimants/appellants are entitled for compensation from the Insurance Company. It is further contended that the Tribunal



6. On the above contention, this Court heard the learned counsel for the second respondent-Insurance Company and perused the materials placed.

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:-

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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.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 order dated 02.04.2014 passed in MCOP No. 257 of 2013 on the file of the Motor Accidents Claims Tribunal (District Court) Nagapattinam 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 claimants towards Personal Accident Cover proportionate to the premium paid by the deceased, within a period of six weeks from the date of receipt of a copy of this judgment. The amount of Rs.1,00,000/- is directed to be apportioned among the claimants at 25% each.

10.Accordingly, the Civil Miscellaneous Appeal is partly allowed. No costs.

Sd/-

Assistant Registrar (CS-I)

//True Copy//

Sub Assistant Registrar

Rsh



To

1. The Motor Accidents Claims Tribunal (District Court) Nagapattinam.

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

+1cc to Mr.S.Sounthar, Advocate SR.No.49136
+1cc to Mr.C.Ramesh Babu, Advocate SR.No.48168

CMA No. 2901 of 2014

PA (CO)
GN(16/03/2022)