IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.01.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1983 of 2020

1.Jayalakshmi
2.Packirisamy ...Appellants / Petitioners

Vs.

The New India Assurance Company,
Rep. By its Branch Manager,
Office at No.30, 2nd Floor,
Jawaharlal Nehru Street,
Pondicherry. ...Respondent / Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 16.10.2019, made in M.C.O.P. No.193 of 2016, on the file of the District Court, (Motor Accident Claims Tribunal) Karaikal.

For Appellants : Mr.K.Varadhakamaraj

For Respondent : Mr.J.Chandran

J U D G M E N T

The matter is heard through "Video Conferencing".

This appeal has been filed against dismissal of claim petition by the award dated 16.10.2019, made in M.C.O.P. No.193 of 2016, on the file of the District Court, (Motor Accident Claims Tribunal) Karaikal.

2.The appellants filed M.C.O.P. No.193 of 2016, on the file of the District Court, (Motor Accident Claims Tribunal) Karaikal, claiming a sum of Rs.30,00,000/- as compensation for the death of one Karthick who died in the accident that took place on 10.02.2016.

3.According to the appellants, on the date of accident at about 6.00 am, when the deceased was riding his Motorcycle bearing Registration No. PY-02-P-8096 along with pillion rider from Vanjore to T.R.Pattinam, by Nagore Salai, Gandhi Road at T.R.Pattinam, near Ellaiamman Koil Street, from South to North, while making a turn on the road, the Motorcycle got into the sandy side part of the road and hit by a wooden plate on the vegetable shop and hit on the compound wall and caused the accident. In the accident the deceased sustained fatal injuries. Hence, the appellants filed the claim petition, claiming compensation against the respondent as insurer of the said Motorcycle.

4.The respondent - Insurance Company filed counter statement and denied all the averments made by the appellants. According to the respondent, the language used in the Insurance Certificate - "Motor Insurance Certificate cum policy schedule Motorized – Two Wheelers package policy – Zone B" does not presume that the policy taken by the deceased is a package policy. The premium paid by the deceased in the policy will not cover personal injuries sustained by him/owner of the vehicle and the policy issued to the deceased will not cover owner's entitlement. The deceased has paid a gross premium of Rs.554/-. The appellants failed to produce driving license of the deceased. The accident is self inflicted by the deceased. In the absence of separate premium paid for owner's coverage, the appellants are entitled to only specific compensation amount. The total compensation claimed by the appellant is excessive and prayed for dismissal of the claim petition.

5.Before the Tribunal, the 1st appellant examined herself as P.W.1 and examined one A.Ramanathan as P.W.2 and marked 12 documents as Exs.P1 to P12. The respondent examined their Official viz., A.Lawrence as R.W.1 and marked 1 document as Ex.R1.

6.The Tribunal considering the pleadings, oral and documentary evidence, dismissed the claim petition on the ground that the policy issued by the respondent-Insurance Company is package policy and no premium was paid by the deceased for personal accident cover under Ex.P3 Insurance Policy.

7.Challenging the dismissal of claim petition by the award dated 16.10.2019, made in M.C.O.P. No.193 of 2016, the appellants have come out with the present appeal.

8.The learned counsel appearing for the appellants contended that the Tribunal erred in dismissing the claim petition when the policy issued by the respondent is a package policy. The policy issued by the respondent covers the risk of the owner and and driver. It is not necessary to pay separate premium to cover the risk of the owner and driver. The Tribunal ought to have allowed the claim petition and prayed for allowing the appeal.

9.The learned counsel appearing for the respondent-Insurance Company made submissions in support of the award of the Tribunal and prayed for dismissal of the appeal.

10.Heard learned counsel appearing for the appellants as well as the respondent-Insurance Company and perused the materials available on record.

11.It is the contention of the appellants themselves that their son while riding the Motorcycle from South to North, while making a turn on the road, the vehicle got into the sandy side part of the road and hit by a wooden plate on the vegetable shop and on the compound wall of one Packirisamy and caused the accident. In the accident, he sustained severe injuries and died. This clearly shows that accident is only due to negligence on the part of the deceased. The appellants filed the claim petition under Section 166 of the Motor Vehicles Act. In the claim petition filed under Section 166 of the Motor Vehicles Act, the claimants must prove the negligence on the part of the driver of the offending vehicle. In the present case, the deceased, son of the appellants was the tort-feasor. Hence, the appellants are not entitled to claim compensation under Section 166 of the Motor Vehicles Act.

12.Further, the contention of the learned counsel appearing for the appellants is that the policy issued by the respondent-Insurance Company is a package policy and without paying any additional premium, the owner and driver are covered for personal accident coverage. The said contention is not acceptable. Unless separate premium is paid for Personal Accident Coverage, the Insurance Company is not liable to pay any compensation to the owner and driver, when they are the tort-feasor under the Personal Accident Coverage. When the owner of the vehicle pays additional premium specifically for Personal Accident Coverage and Insurance Company accepts the premium, a contract is entered into between the insurer and insured. The Insurance Company as per the said contract is liable to pay compensation as per the Personal Accident Coverage for owner and driver. If no premium is paid for Personal Accident Coverage, the owner, rider of the Motorcycle or legal heirs in case of death cannot maintain the claim petition against the insurer. The insurer is liable to indemnify the owner in respect of claim made by the third party. The owner and driver of the insured vehicle are not third parties and they cannot claim compensation against the Insurance Company. This issue was considered by a Division Bench of this Court in a judgment reported in 2017 (2)

TN MAC 674 (DB) [Divisional Manager, United India Insurance Co. Ltd., Vs. R. Rekha and others], wherein it has been held as follows:

> "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-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 traveling 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."

13.The Hon'ble Apex Court in the judgment reported in (2020) 2 SCC 550 [Ramkhiladi and another Vs. United India Insurance Co. Ltd., and another], has held as follows:

> "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 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.”

14.In the present case, the deceased/owner of the vehicle has not paid any premium for Personal Accident Coverage. The Tribunal considering the materials placed before it, rightly dismissed the claim petition. There is no error in the award of the Tribunal warranting interference by this Court.

15.In the result, the appeal is dismissed. No costs.

Sd/-
Assistant Registrar(CS-V)

//True copy//

Sub Assistant Registrar

gsa

To

1.The District Judge,
(Motor Accident Claims Tribunal),
Karaikal.

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

+1cc to Mr.K.Vardha Kamaraj, Advocate SR.No.1000
+1cc to Mr.J.Chandran, Advocate SR.No.874

C.M.A.No.1983 of 2020

VBA(CO)
RVM(11/08/2021)