



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.03.2021

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

C.M.A.No.1751 of 2017

United India Insurance Company Ltd.,
Rep. by its Branch Manager,
22, 1st Floor,
Siyamaladevi Amman Kovil Street,
Pandaladi, Mannarkudi Town & Taluk,
Thiruvarur District.

...Appellant/2nd Respondent

Vs

1.Manoharan
2.Muthulakshmi
3.Sathiskumar
4.Prakash
5.Ragunathan

...Respondents 1 to 4/Claimants

...Respondent/1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 16.08.2016 made in M.C.O.P.No.76 of 2015 on the file of the Motor Accidents Claims Tribunal, Additional Sub Court, Mayiladuthurai.

For Appellant : Mr.D.Bhaskaran

For Respondents : Mr.T.Gobinath for R1 to R4
R5-No Appearance

J U D G M E N T

Heard the learned counsel for the appellant. Though the matter was adjourned for more than four times for the respondents appearance, the respondents are not ready. Therefore, this Court is constrained to hear the learned counsel for the appellant and dispose the matter on merits.



2.It is the case, where one Rajesh, aged 28 years working as a Mason and earning Rs.15,000/- per month as per the claim petition died on 25.01.2015 at about 11.30 p.m., when he was riding a two wheeler bearing Registration No.TN50U 6898 along Thanjai to Nagai main Road, on seeing a four wheeler with high beam light, he lost his balance and hit a tree and died on the spot. Along with him, there were two other persons on the pillion travelling in the motor cycle. The claim petition was filed against the owner of the two wheeler and its insurer. A sum of Rs.30,00,000/- was sought as compensation.

3.The Insurance Company opposed the claim petition filed under Section 163A of the Motor Vehicles Act on the ground that the provision of Section 163A of the Motor Vehicles Act only exempts the claimant from proving negligence of the offending vehicle and nothing else. In this case, the accident has occurred due to the negligence of the deceased, who was driving a two wheeler without license and also under the influence of alcohol carrying two persons on the pillion. The violation of the Motor Vehicles Act and the policy condition disentitle the claimants from seeking compensation from the Insurance Company.

4.The Tribunal after considering the rival submissions and evidence placed, accepted that the deceased had no valid driving license but held that the Insurance Company has failed to establish that the deceased was driving the vehicle under the influence of alcohol. Further, the Tribunal has also held that the cause for accident was not the negligence of the deceased but the high beam light of the lorry, which was coming on the opposite side, made the rider of the two wheeler to lose his balance and hit against the tree.

5.In the appeal, the learned counsel for the appellant/Insurance Company submitted that the deceased is the tortfeasor. He is not only the tortfeasor but also not the registered owner of the vehicle. Besides, he had no valid driving license and carrying two persons on the pillion contrary to the Motor Vehicles Act. The provisions of Section 163A of the Motor Vehicles Act has been wrongly understood by the Tribunal and has awarded compensation applying the schedule.

6.Court entertained the petition under Section 163A, when the claimants satisfied the pre condition viz., the income of the claimant is less than Rs.40,000/- per annum and the accident has caused permanent injury or death. In this case, though the petition is filed under Section 163A of the Motor Vehicles Act, the claim is for Rs.30,00,000/- on the premise that the deceased was earning Rs.15,000/- per month. In such circumstances, the Tribunal ought not to have entertained this petition at all. Dehors of the defect in the claim petition, the same has been



entertained and also award has been passed applying the schedule, without considering the fact that there was no other vehicle involved in the accident.

7. The claimant had no valid driving license and admittedly, three persons were travelling in the motor cycle at the time of accident. Though the final report was closed on the ground that the rider of the two wheeler was under the influence of alcohol, there is no evidence in the Post Mortem Certificate about the presence of alcohol. Therefore the Tribunal has rightly held that the Insurance Company has failed to prove that the deceased was under the influence of alcohol. But the fact that the non possession of valid driving license and carrying two persons on the pillion, claiming Rs.30,00,000/- as compensation under Section 163A of the Motor Vehicles Act, disentitle the claimant to sustain the petition. The Tribunal had not properly applied the law and the facts based on the averments made in the claim petition.

8. The Tribunal no doubt had ordered pay and recovery but this Court is of the view that even the responsibility of paying does not arise to the Insurance Company in this case, when there is a grave policy violation and no contract between the deceased person and the Insurance Company. Therefore, the appeal is partly allowed, the order directing the Insurance Company to pay the claimant and then recover from the owner of the vehicle is modified. Instead, the award amount shall be recovered from the owner of the vehicle T.Raghunathan, who is the first respondent in the claim petition/fifth respondent in the appeal.

9. Learned counsel for the appellant states that the Insurance Company has deposited the entire award amount. In such case, the Insurance Company is permitted to withdraw the same. The claimants are at liberty to proceed against the owner of the vehicle for recovery of the award amount, as contemplated under Shri Nanjappan case reported in (2004 (2) CTC 464(SC).

10. In the result, the civil miscellaneous appeal is partly allowed. No order as to costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

vri



To

The Additional Sub Court,
The Motor Accidents Claims Tribunal,
Mayiladuthurai.

Copy To

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

+1cc to Mr.D.Bhaskaran, Advocate, S.R.No.13956/21

+1cc to Mr.T.Gopinath, Advocate, S.R.No.14613/21

C.M.A.NO.1751 of 2017

GP (CO)
RGA (09/09/2021)