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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :18.03.2021

Pronounced on :23.03.2021

Coram:

THE HONOURABLE DR. JUSTICE G. JAYACHANDRAN

C.M.A.No.1939 of 2017

Irudhayamary

.. Appellant/Petitioner

/versus/

1.N.Marimuthu

2.Reliance General Insurance Company Ltd.,
Plot No.2024, 2nd Avenue, 2nd Floor,
Anna Nagar, Chennai 600 040.

.. Respondents /Respondents

Prayer: Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and judgment dated 11.12.2015 made in M.C.O.P.No.271 of 2013 on the file of the Motor Accident Claims Tribunal (II Additional District Court), Poonamallee.

For Appellant :Mr.K.Varadha Kamaraj

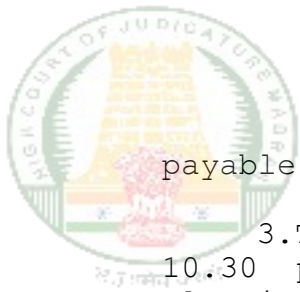
For Respondents:Mr.S.Arun Kumar for R2
R1-No Appearance

J U D G M E N T

(The case has been heard through Video Conferencing)

This appeal is filed by the claimant, who is the mother of the accident victim. The Tribunal, which tried the claim petition of the appellant, partially allowed the claim petition and awarded a sum of Rs.11,20,000/- payable by the owner of the offending vehicle and exonerated the insurance company.

2.In the appeal, the said award is challenged on the ground that the Tribunal went wrong in exonerating the insurance company by holding that the accident happened due to mechanical defect and not due to negligence of the vehicle driver. The Tribunal ignoring the fact that the claim petition was filed under Section 163A of the Motor Vehicle Act, exonerated the insurance company of the vehicle and awarded a sum of Rs.6,60,000/- only as against the claim of Rs.10,00,000/-



payable by the vehicle owner.

3.The facts of the case is that ,on 10.11.2012, at about 10.30 p.m, when the deceased Karthick, S/o Marimuthu, was cleaning the maxicab bearing Reg.No. TN-22V-6976 owned by his father, the vehicle got self started and hit the deceased, who was cleaning the vehicle and ran over him. The deceased was severely injured and taken to the hospital but died. Claiming Rs.12,00,000/- as compensation against that the owner of the vehicle and its insurer, the claim petition was filed under Section 163A of the Motor Vehicles Act.

4.The Insurance Company filed counter stating that the deceased did not die due to the road accident. He is the son of the insured. The insurance company is not liable to compensate the claim. The claim of Rs.12,00,000/- is extremely high. It is doubtful whether the Maxicab van bearing Reg.No.TN-22-V-6976 suffered mechanical failure or whether the deceased was at fault, which caused the accident. Therefore, the claim petition as against them to be dismissed.

5.Before the Tribunal, the claimant and one Somasundaram were examined as claimant's witnesses. 6 exhibits were marked in support of the claim petition. On behalf of the respondents, one witness was examined and the vehicle policy copy was marked as Ex.R1.

6.The Tribunal, after appreciating the evidence, held that as per the First Information Report, the accident occurred, due to mechanical failure of the maxicab. The engine of the parked van suddenly activated, moved and crushed the deceased, who was cleaning the vehicle. To support this contention found in the First Information Report, the Motor Vehicle Inspector Report certifying that there was a mechanical fault in the vehicle has not been produced. Therefore, the Tribunal suspected the content of the First Information Report and the theory of mechanical fault. Therefore, under Section 163A of the Motor Vehicles Act, the Tribunal held that the claimant is not entitled to claim compensation against the Insurance Company and fixed the liability on the owner of the vehicle and awarded a sum of Rs.11,20,000/-.

7.The learned counsel appearing for the 2nd respondent/Insurance Company submitted that the case of the claimant is that, when her son was cleaning the Maxi cab, the engine of the vehicle got activated and vehicle started moving and hit her son. This contention though found in First Information Report has not been proved through the Motor Vehicle Inspector Report, PW-2(Mr.Somasundaram), who was examined to prove that the accident occurred, due to the mechanical fault of



the vehicle, in the cross examination, concedes that he did not see the accident, he went to the scene of the accident after hearing the sound. The First Information Report recorded on 11.11.2012, the day next to the accident was based on the complaint given by the father of the deceased. He is being the owner of the vehicle in the complaint, has stated that his son was employed as the driver of the vehicle. Therefore, the learned counsel appearing for the 2nd respondent/insurance company submitted that the accident has occurred purely due to the negligence of the deceased. He being a tort-feasor for his death the dependants cannot claim any compensation against the insurance company.

8. From the evidence placed before this Court, particularly, the insurance policy marked as Ex.R1 and the First Information Report marked as Ex.P1, it is cleared that the deceased Karthick had sustained severe bodily injury, particularly, on his forehead. His skull had got fractured and injuries on the frontal region been found in the Post Mortem Certificate. The First Information Report indicates that while the deceased was cleaning the Maxicab van, it moved and hit him. As per the First Information Report, the parked vehicle suddenly started, due to the mechanical fault and hit the deceased. The deceased was cleaning the van either as a owner of the van or employee under the owner. The Insurance policy is a package policy, where there is a personal accident cover benefit for the owner-cum-driver for which additional premium a sum of Rs.100/- has been collected. A limited liability premium for the driver Rs.25/- has also been collected. The Tribunal has held that being a tort-feasor and in the absence of the proof that the accident occurred due to the mechanical fault of the vehicle, the Insurance company is not liable to pay the compensation and exonerated the insurance company.

9. On perusing the policy, which is the package policy and the premium for compulsory personal accident cover for the owner cum driver has been collected. If the deceased is considered as the son of the vehicle owner and died while cleaning the vehicle, he has to be considered as a person, who has entered into shoes of the owner. In alternate, if he is considered as the driver of the vehicle, then again the WC cover will ensure the compensation to be paid by the Insurance Company. Either way having collected premium of Rs.100/- under PA cover besides a sum of Rs.25/- for the paid drivers towards limited liability, this Court is of the view that the insurance company/2nd respondent cannot be exonerated from its liability to pay compensation to the claimant for the death of Karthick.

10. It is not the case of the insurance company that the death of Karthick was not due to the hit of the van. Having



accepted that the accident occurred due to the hit of the van, while cleaning the front of the vehicle, the insurance company has to be held liable to pay compensation to the owner cum driver under PA cover. Therefore, this Court by holding that the deceased as son of the vehicle owner had entered into shoes of the owner and as a driver, while maintaining the vehicle, the vehicle has moved and crushed him to death. Hence, the Insurance Company/2nd respondent is liable to pay the compensation.

11. Accordingly, the order of the Tribunal exonerating the second respondent/Insurance Company is set aside. The liability to pay the compensation is fixed on the second respondent/Insurance Company, who has collected the premium for package policy for the offending vehicle. As far as the quantum of the compensation concerned, this Court finds that the Tribunal has gone into all the facts regarding the entitlement and has awarded a fair compensation of Rs.11,20,000/- for 29 years old unmarried bachelor.

12. The second respondent/Insurance Company is directed to pay the compensation of Rs.11,20,000/- along with interest at the rate of 7.5% p.a, from the date of petition i.e. 06.04.2013 till the date of realisation. The second respondent/Insurance Company is directed to deposit the compensation, within a period of 12 weeks, from the date of receipt of a copy of this order. On such deposit, the appellant/claimant is permitted to withdraw the said amount on appropriate application.

13. In the result, this Civil Miscellaneous Appeal is partly allowed. No order as to costs.

Sd/-
Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

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To:

The Motor Accident Claims Tribunal,
II Additional District Court, Poonamallee.

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



+1cc to Mr.S.Arun Kumar, Advocate, S.R.No.18788
+1cc to Mr.K.Varadha Kamaraj, Advocate, S.R.No.18926

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PA (CO)
CB(04/10/2021)