IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.03.2021

CORAM:

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

C.M.A.No.2332 2017
and
CMP No.12540 of 2017

United India Insurance Company Ltd.,
Rep. by its Branch Manager,
at 123A, No.2, Road,
Mayiladuthurai Taluk and Town,
Nagapattinam District. ...Appellant / 2nd Respondent

Vs

1.Rajakumari
2.Sathishkumar Respondents 1 & 2 / Claimants 1 & 2

3.Balamurugan ...3rd Respondent / 1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 09.08.2016 made in M.C.O.P.No.106 of 2014 on the file of the Motor Accidents Claims Tribunal, Additional Sub Court, Mayiladuthurai.

For Appellant : Mr.D.Bhaskaran

For Respondents : No Appearance

J U D G M E N T

The appeal is filed by the Insurance Company being aggrieved by the award passed by the Tribunal directing the Insurance Company to pay a sum of Rs.4,55,333/- to the claimants with 7.5% interest from the date of petition till the date of realisation.

2.The brief facts of the case is that on 11.08.2013, at about 6.30 p.m., when Ragavendiran was riding the two wheeler Suzuki bearing Registration No.TN 51 AZ 8462 owned by his brother Balamurugan. While crossing Tharangampadi to Mayiladuthurai main road, near Dharmapuram Arch, he lost the balance due to the poor maintenance of the road and dashed against the electric pole. He sustained head injury and died in the hospital on 20.08.2013. The claim petition filed under Section 163A of the Motor Vehicle Act by the mother and brother of the deceased claiming compensation of Rs.40,00,000/-. As per the claim petition, the deceased was employed as Constable in the Tamilnadu Reserve Police and earning a sum of Rs.13,949/- per month. He was 27 years old Bachelor at the time of death and due to the sudden demise of the said Ragavendiran, the claimants have lost his income and love and affection.

3.The Insurance Company filed counter stating that the accident occurred due to the negligence of the deceased. He was earning more than Rs.40,000/- per annum, so the petition under Section 163A is not maintainable. The deceased is not the owner of the vehicle or the insured. There is no privity of contract between the deceased and the Insurance Company. Under Section 147 of the Motor Vehicles Act, the Insurance Company is not liable to indemnify the deceased, since there is no statutory liability or contractual liability on the Insurance Company. Hence, the claim petition against the Insurance Company is not maintainable.

4.Before the Tribunal, the claimants examined three witnesses and marked five exhibits. On behalf of the Insurance Company, two exhibits were marked. The salary particulars of the deceased forwarded by the police Superintendent was marked as Ex.X1. The Tribunal awarded a sum of Rs.4,55,333/- as compensation to the claimants.

5.In the appeal, the learned counsel appearing for the appellant submitted that the Tribunal erred in entertaining the petition under Section 163A inspite of the fact that the claimant was earning Rs.13,949/- per month and the claimants are not eligible to file petition under Section 163A, which is restricted to the claimants income upto Rs.40,000/-. Secondly, the deceased is a tort feasor and thirdly, there is no privity of contract between the Insurance Company and the deceased. No premium was collected to cover the risk of rider.

6.Relying upon the judgments of the Supreme Court, which is starting from Oriental Insurance Company vs Rajni Devi and others, (2008) 5 SCC 736 and Ningamma and another vs United India Insurance Co. Ltd., learned counsel for the appellant submitted that the Insurance Company cannot be held liable for the risk of borrower of the vehicle.

7.In this regard, the Court perused the insurance policy of the two wheeler, which was insured under the appellant and driven by the deceased at the time of accident. The said policy was marked as Ex.R2. It is a package policy wherein a sum of Rs.1554/- collected towards premium. No extra premium is collected to cover the risk of driver or personal accident of the owner. In such circumstances, as held by the Supreme Court and High Courts in the judgments relied by the learned counsel for the appellant, the Insurance Company need not indemnify the vehicle owner. However, on perusing the deposition of R.W.2, the official of the appellant company, this Court finds that the appellant had agreed to pay a sum of Rs.1,00,000/- to the claimants. Taking note of the said submission, the appeal is partly allowed. The liability of the Insurance Company is restricted to Rs.1,00,000/-, which is admitted by the official of the appellant. The said sum shall carry 7.5% interest per annum from the date of petition till date of realisation.

8. Learned counsel for the appellant states that the award amount has already been deposited along with accrued interest in the MCOP account. If it is so, the appellant is permitted to withdraw the excess amount lying in the deposit less deducting the award amount as modified under this appeal. The claimants are permitted to withdraw the award amount along with the proportionate interest accrued as below:

Claimants	Apportionment of compensation
1st Claimant Mother	Rs.75,000/- plus interest accrued
2nd Claimant Brother	Rs.25,000/- plus interest accrued

9.In the a result, the Civil Miscellaneous Appeal is partly allowed. No order as to costs. The connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

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To

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

Copy To:

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

CMA NO.2332 of 2017

LN(CO)
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