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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :23.11.2021

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM
and
THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

C.M.A.No.4523 of 2019
and

C.M.P.No.25602 of 2019

M/s Bharti AXA General Insurance Co.Ltd.,
Metro Plaza, 2nd Floor
No.162, Anna Salai,
Chennai - 600 002.

... Appellant/2nd Respondent

Vs.

1.R.Saranya

2.Minor V.S.Sanjana

3.Minor V.S.Pugazhini

4.Dhanapathy

5.Rajasulochana

... Respondents 1 to 5/Claimants

6.L.Rozarine Berna

(Minors 2 and 3 are rep.by their mother
and Next friend R.Saranya)

... Respondent/Petitioners 1 to 5, 1st Respondent

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act 1988, against the judgment and decree dated 15.06.2019 made in M.C.O.P.No.6017 of 2014 on the file of the Motor Accidents Claims Tribunal, Special Sub Judge No.1, Chennai.

For Appellant : Mr.S.Arunkumar

For Respondents : Mr.G.Balaji Prasad
for RR1 to 5
No appearance for R6

JUDGMENT

[Judgment of the Court was delivered by K.KALYANASUNDARAM, J.]

This Civil Miscellaneous Appeal is directed against the award passed on 15.06.2019 made in M.C.O.P.No.6017 of 2014 on



the file of the Motor Accidents Claims Tribunal, Special Sub Judge No.1, Chennai.

2.The legal heirs of the deceased - Varunkumar, who died in a road accident on 29.06.2014, filed a claim petition seeking compensation of Rs.2,00,00,000/- before the Tribunal. It is their case that on 29.06.2014 at about 12.00 hours, when the deceased was driving a Car bearing Registration No.TN-22-BK-0432, on Nagarkoil - Thirunelveli National Highways Road, Near manjil Hotel, Valliyur, the front right side wheel tyre got burst, resulting the said Car hit the centre median of the road and the Car capsized. In the accident, the deceased died on the spot.

3.The appellant resisted the claim petition contending that the deceased himself is a tort feaser and hence, claimants are not entitled for compensation. It is also stated that the vehicle was overloaded at the time of accident. In the additional counter it is stated that the deceased is not a third party and the claim is not maintainable under Section 147 of the Motor Vehicles Act.

4.During the trial, to substantiate the claim, on the side of the claimants, three witnesses were examined and Ex.P1 to Ex.P16 were marked. On the side of the Insurance Company, RW1 to RW4 gave evidence and Ex.R1 to Ex.R4 were marked. Upon consideration of the same, the Tribunal has come to the conclusion that the accident occurred due to tyre burst and by relying upon the decision of the Hon'ble Apex Court reported in 2001 ACJ P428 (SC) (Khaushnuma Begam's Case) and 2012 ACJ Page 1909 in the case of the National Insurance Co. Vs. Janaki and others held that the 2nd respondent is liable to pay the compensation at the first instance and thereafter it can be recovered from the 1st respondent. The Tribunal has determined the amount at Rs.91,28,784/- along with interest at the rate of 7.5% per annum, from the date of claim petition till the date of realization.

5.Questioning the above award passed by the Tribunal, the present appeal has been filed.

6.The learned counsel, Mr.S.Arunkumar, appearing for the appellant/Insurance Company by placing reliance on the decision reported in 2020 (1) TN MAC 1 (SC) in the case of Ramkhiladi and another Vs. United India Insurance Co. Ltd., and another would contend that the deceased is not an employee of the insured vehicle. Although he is not owner, he would step into the shoes of the owner and hence, the insurance company is not liable to pay the compensation. The relevant paragraph is extracted hereunder:-

"(v). That in the case of Ningamma v.



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United India Insurance Co. Ltd., 2009 (2) TN MAC 169 (SC) : 2009 (13) SCC 710 and New India Assurance Co. Ltd., v. Sadanand Mukhi, 2009 (1) TN MAC 55 (SC) : 2009 (2) SCC 417, this Court has held that the owner of the vehicle or his legal representatives or the borrower of the vehicle cannot raise a claim for an accident in which there was no negligence on the part of the insured vehicle. It is submitted that in the aforesaid decisions, this Court has held that the borrower of the vehicle steps into the shoes of the owner and, therefore, the borrower of the vehicle or his legal representatives are not entitled to compensation from the insurer under the Act. It is submitted that the deceased in the present case has stepped into the shoes of the owner and therefore, not entitled to any third party compensation from the insured vehicle."

7.The learned counsel for the claimants argued in support of the award of the Tribunal and further contended that the Tribunal considering the materials and judgments relied on and scope of Sections 166 and 147, held that respondents are entitled to get compensation under Section 166 of Motor Vehicles Act and the appellant/Insurance Company cannot escape from indemnifying the insured. According to the learned counsel, there is no error in the said award of the Tribunal and prayed for dismissal of the appeal.

8.This Court carefully considered the submissions of the learned counsel for the appellant Insurance Company; learned counsel for the claimants and perused the materials available on record.

9.From the materials available on record, it is seen that it is the case of the claimants that the deceased was a Designing Engineer and he was earning Rs.70,000/- per mensem. When he was proceeding in a Car bearing Registration No.TN-22K-0432 from Nagarkoil to Thiruvvelveli National Highways Road, front right side wheel tyre got burst, due to which, the deceased sustained injuries and died. The accident occurred only due to the gross negligence of the owner of the Car, who did not maintain the car properly. On the other hand, the 2nd respondent/Insurance company would state that the FIR has been registered as against the vehicle TN - 22-BK - 0432, driven by the deceased. Further, the police after thorough investigation closed the final report as "action dropped". From the above, we can infer that the accident had happened solely due to the rash and negligent act of the deceased, which resulted in the tyre



burst. It is settled legal position that if the deceased is a tortfeasor, his legal heirs are not entitled to maintain the claim petition under Section 166 of Motor Vehicles Act. Further more if the claim petition is filed under Section 166 of Motor Vehicles Act, the claimants have to prove the negligence on the part of the other party. The claimants in this case, failed to establish the same. It is not seriously disputed that as per the policy coverage, the appellant/Insurance company is liable to pay the personal coverage, to an extent of Rs.2 Lakhs. Therefore, the award dated 15.06.2019 in M.C.O.P.No.6017 of 2014 passed by the Motor Accidents Claims Tribunal, Special Sub Judge No.1, Chennai, is hereby set aside.

10. In the result, this Civil Miscellaneous Appeal is partly allowed and the appellant/Insurance Company is directed to deposit the modified award amount of Rs.2 Lakhs along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit, less the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this judgment. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

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To

1. The Motor Accidents Claims Tribunal,
Special Sub Judge No.1, Chennai.

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

+1cc to Mr.S.Arun Kumar, Advocate SR.No.60886

+2cc to Mr.G.Balaji Prasad, Advocate SR.No.60506

C.M.A.No.4523 of 2019
and

C.M.P.No.25602 of 2019

NMI (CO)
GN(14/02/2022)