IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.12.2022

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

AND

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

C.M.A.No.984 of 2018

1.Pon. Banu

2.B.S.Suma Priyanga
[2nd petitioner declared as major vide Court order dated 23.03.2018 made in CMP.No.4958/2018 in CMA.SR.No.13723/2018]

3.K.Senthamilselvi ...Appellants

-Vs-

1.United India Insurance Company Limited
Having its Division Office No.1,
at D.No.104A, Peramnu Road,
Salem – 636 007.

2.The Chairman,
Insurance Regulatory and Development Authority of India (IRDAI)
SY No.115/1, Financial District, Nanakramguda, Gochibowli,
Hyderabad – 500 032.

3.Union of India,
Represented by its Secretary,
Ministry of Surface Transport,
New Delhi.

4.Union of India,
Represented by its Secretary,
Law and Justice Department,
New Delhi.

5.State of Tamil Nadu,
Represented by its Secretary,
Transport Department,
Fort St. George,
Chennai.

6.State of Tamil Nadu,
Represented by its Secretary,
Transport Department,
Fort St. George,
Chennai. ...Respondents

[R2 to R6 suo moto impleaded as respondents vide Court order dated 25.04.2018 made in C.M.A.No.984/2018]

Prayer:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree, dated 04.08.2017, in M.C.O.P.No.461 of 2014 on the file of the Motor Vehicle Accident Claims Tribunal (Principal District Judge), Namakkal.

For Appellants	:	Mr.D.Shiva Kumar
For R1	:	Mr.S.Arun Kumar
For R2	:	Mr.M.B.Raghavan
For RR3 & 4	:	Mr.S.Diwakar
For RR5 & 6	:	M/s.B.TamilNidhi Additional Government Pleader

JUDGMENT

[Judgment of the Court was made by **S.S.SUNDAR, J**.,]

This appeal has been preferred by the claimants for enhancement of compensation. The claimants are the wife and children of the owner cum driver of the vehicle which met with an accident.

2. It is the case of the claimants that the deceased namely K.Soundararajan paid an additional premium of Rs.100/- to cover his own risk, i.e. compulsory personal accident to owner cum driver. The deceased worked as a Maths Assistant Professor in Arignar Anna Government Arts College, Namakkal and he was drawing salary a sum of Rs.44,037/- per month. Stating that the petitioners have lost their moral and economical support of the deceased, the petitioners claimed compensation of Rs.75,00,000/-. However, the Tribunal awarded only a sum of Rs.2,00,000/- on the ground that as per the policy the claimants who are the dependants of the owner cum driver of the vehicle are entitled to a sum of Rs.2,00,000/- because of the extra premium paid by the claimants himself.

3. It is not in dispute that the deceased was the owner of the insured vehicle and the vehicle was driven by him. It is admitted that the deceased himself was the tortfeasor and as car driven by the deceased hit the barricade. No other vehicle is involved. Though the deceased was injured very badly, he succumbed to injuries later. In view of the fact that the liability is limited to the extent of cover as per the policy, the Insurance Company disputed the liability.

4. The learned counsel appearing for the Insurance Company relied upon the judgment of this Court and the provision of Motor Vehicles Act to submit Section 137(b) of the Motor Vehicles Act does not support the claimants/appellants as the additional premium was only towards Personal Accident Cover up to 2 lakhs. The learned counsel appearing for the Insurance Company relied upon a judgment of the Division Bench of this Court in ***C.M.A.No.1428 of 2017*** dated ***26.10.2017***, in ***Divisional Manager, United India Insurance Company Ltd., Vs. R.Rekha***, reported in ***2017 (2) TNMAC 674*** wherein it is 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 travelling 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 quesiton 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.

27. Before parting with, we are pained to observe that as per the Indian Motor Tariff, the compensation payable to the legal heirs in case of death or bodily injury suffered by the owner of the vehicle is restricted to Rs.1,00,000/- only in case of two wheeler and Rs.2,00,000/- in case of four wheeler, by virtue of the Compulsory Personal Accident Cover mooted by the statutory authorities in charge of regulating the Motor Insurance Policies. As per the Compulsory Personal Accident Cover, in case of death or bodily injury sustained by the owner of the vehicle, he or she is eligible for compensation of Rs.1,00,000/- alone.. The amount of compensation payable by the Insurer is confined and limited to the extent of Rs.1,00,000/- as per the India Motor Tariff, which came into effect from 01.08.2002. It is noteworthy to mention that prior to 01.08.2002, even the compensation of Rs.1,00,000/- for two wheeler owner and Rs.2,00,000/- for owner of four wheeler was not envisaged and the unfortunate victim of motor accidents, whose death is caused in the motor accident or who sustain bodily injury, will be left without any amount of compensation. It is needless to mention that nobody will *suffer bodily injury or die voluntarily or on their own, particuarly in a road accident that are caused only due to negligence and carelessness. A small omission or diversion while driving the vehicle by the drivers of the motor vehicle has very many consequences not only in the physical condition of the injured, but also leaves the legal heirs of the deceased to grope in the dark with clueless future. Therefore such accidents caused, unmindful of the consequences, should not be made to deprive the owner of the vehicle or his or her family to suffer and such sufferings should be mitigated by means of adopting a fair policy to compensate those victims of road accidents."*

5. Though based on the IRDA Report this Court has issued some directions in the same judgment, subsequently the liability was limited originally to a sum of Rs.1,00,000/- was revised to Rs.2,00,000/- and now it is stated that the liability has been increased to Rs.15,00,000/-. Having regard to the policy conditions, this Court is unable to enhance the amount beyond Rs.2,00,000/-.

6. Therefore, this appeal is liable to be dismissed. There shall be no order as to costs.

[SSSRJ] [AANJ]
08.12.2022

cda
Index : Yes/No

S.S.SUNDAR, J.,

AND

A.A.NAKKIRAN, J.,
cda

To

The Principal District Judge,
(Motor Vehicle Accident Claims Tribunal),
Namakkal.

C.M.A.No.984 of 2018

08.12.2022