IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.01.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

Civil Miscellaneous Appeal No.2756 of 2021

1. Megala
2. Rajesh
3. Minor Deepan
4. Minor Prasad
(Minor petitioners 3 & 4 are represented by their mother and natural guardian the 1st petitioner herein)
5. Letchumi ... Appellants/Petitioners

Vs.

1. Sundaravel

2. The National Insurance Company Ltd., Thiruvarur, Rep. By the Branch Manager, Having his office at Thiruvarur Town, Taluk, District & Munsif. Thiruvarur. ... Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, to allow the claim in MCOP No.8 of 2018 dated 21.12.2020, on the file of Motor Accident Claims Tribunal, (Additional District Judge, Fast Track Mahila Court), Nagapattinam.

For Appellant	:	Mr. K.Varadhakamaraj
For 2nd Respondent	:	Mr.D.Baskaran
R1	:	NA

J U D G M E N T

The wholesale rejection of the claim petition under Section 163 A of the Motor Vehicles Act, by the legal heirs of Murugesan, who died in a Motor Accident that occurred on 09.09.2013, has resulted in this Appeal by the said legal heirs.

2.The claimants sought for compensation of Rs.60,00,000/-

contending that the deceased was forced to go to the extreme left side of the road because of oncoming vehicle which was driven in a rash and negligent manner and as a result of it, he dashed against the Banyan Tree. The accident resulted in his death. Therefore, according to the claimants, since Murugesan is a third party, he would be entitled to compensation under Section 166 of the Motor Vehicles Act.

3. The claim was resisted by the Insurance Company contending that the accident was caused due to the negligence of Murugesan and he being a borrower and rider of the vehicle cannot be treated as a third party. Even assuming he could be treated as a third party, the said Murugesan did not have a valid driving license and therefore, he is not entitled to compensation even under the Personal Accident cover that is available to the owner of the vehicle.

4. The Tribunal upon examination of the evidence on record found that the deceased was riding a borrowed two wheeler, which belonged to one Sundaravel, it was also found that the deceased did not have a valid driving license. In view of the above factual situation, the Tribunal held that though he could be treated as a person, who had stepped into the shoes of the owner and would be entitled to the fixed compensation under the Personal Accident Cover, since he was driving the vehicle without a valid driving license, he would not be entitled to that Personal Accident Cover also. On such finding, the Tribunal dismissed the claim petition.

5. Mr.K.Varadhakamaraj, learned counsel appearing for the appellants would contend that in view of the judgment of the Hon'ble Supreme Court in Ramkhiladi and another v. United India Insurance Company and others, reported in 2020 (1) TNMAC 1, wherein the Hon'ble Supreme Court had held that a person, who had borrowed the vehicle of another, steps into the shoes of the owner of the vehicle and therefore, he would be entitled to the limited liability under Personal Accident Cover which is Rs.1,00,000/-.

6. The Original Petition out of which the case before the Hon'ble Supreme Court arose was filed under Section 163A and the Tribunal awarded a sum of Rs.5,00,000/-. When that was challenged before the Hon'ble Supreme Court, The Hon'ble Supreme Court pointed out that the Tribunal could not have granted Rs.5,00,000/-, but as a person stepping into the shoes of the owner, the borrower of the vehicle would be entitled to Rs.1,00,000/- under the Personal Accident Cover. Even assuming

that the judgment to be treated as a precedent for treating a borrower of the vehicle as a person stepping into the shoes of the owner and giving him the benefit of the Personal Accident Cover. It should be shown that the claimant or the deceased would be entitled to that Personal Accident Cover even otherwise also, that is there was no violation of policy condition on his side.

7. The Tribunal in this case had recorded a categorical finding that the deceased had no valid license. Therefore, there is a violation of policy condition which exonerates the Insurance Company from its liability to honour the award. Therefore, even if he is treated as the owner for the purposes of availing the benefit of the Personal Accident Cover, since the action of the claimant was in violation of the policy condition, I do not think, the Tribunal could be faulted for having dismissed the claim petition.

8. I therefore see no merit in the Appeal, the Appeal is dismissed. There shall be no order as to costs in the appeal.

Sd/-
Assistant Registrar(I)

//True Copy//

Sub Assistant Registrar

jv

To

1. The Additional District Judge,
   Fast Track Mahila Court,
   Motor Accident Claims Tribunal,
   Nagapattinam.

Copy To

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

+1cc to Mr.K.Varadhakamaraj, Advocate SR.No.5000

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SRA(CO)
GN(02/03/2022)