IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **08.11.2022**

CORAM

THE HONOURABLE MS. JUSTICE P.T.ASHA

CMA.No.3454 of 2014
and
M.P.No.1 of 2014

The Oriental Insurance Company Ltd.,
Rep. by its Branch Manager,
No.173, GN Chetty Road,
2nd Floor, Oil Mill,
Tiruvallur - 602001.

... Appellant/2nd Respondent

Vs.

1.Krishnan

2.Maniammal ...Respondents 1 & 2/Petitioners

3.Janakar

... 3rd Respondent/1st Respondent

PRAYER : Appeal filed under Section 173 of the Motor Vehicle Act against the Judgement and Decree in MCOP No.14 of 2009, dated 27.01.2014 on the file of the Motor Accidents Claims Tribunal, District Court, Tiruvarur.

For Petitioner : Mr. S.Senthil Kumar

For Respondents : Mr.M.Thamizhavel [R.1 & R.2]
: No appearance [R.3]

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JUDGEMENT

The insurance company has filed the above appeal challenging the award passed by the Motor Accidents Claims Tribunal, District Court, Tiruvarur in as much as the liability to compensate the petitioner has been mulcted on the 2nd respondent/insurance company - appellant herein, though a defence had been taken that the accident had been caused by the rider of the motorcycle himself and further he was not the owner of the vehicle. It was also contended that the rider of the motor cycle, who is the deceased, did not possess a valid driving license on the date of the accident.

2. The Tribunal below has fastened the liability on the insurance company only on the ground that Ex.R.1, insurance policy would show that there is a personal accident cover for the owner-cum-driver and therefore proceeded to mulct the liability on the insurance company.

3. The learned counsel appearing for the 1st respondent/petitioner would contest the above defence stating that this plea has been taken for the first time in the appeal and it cannot be now argued. He would further submit that the judgment relied upon by the counsel for the appellant/insurance company namely ***2022 (2) LW 265 - The Divisional Manager, TATA AIG General Insurance Company Limited Vs. A.C.Jagadeesann and Other*** relates to a case of injury and whereas the instant case relates to a fatal accident.

4. Heard both the counsels.

5. A perusal of Ex.R.1, insurance policy would show that the vehicle, namely, the motor cycle has been covered under a personal accident cover for the owner-cum-driver. In the instant case, admittedly, the vehicle was not driven by the owner, the 1^{st} respondent. The said fact is proved from a perusal of contents of Ex.R.3, which is a reply notice issued by the 1^{st} respondent to the counsel for the insurance company dated 19.08.2013 in which he had contended that he had purchased the property/vehicle under a financial arrangement with one Dinesh Finance who had seized the vehicle

on 24.09.2004. The 1st respondent had therefore contended that he is not aware as to whom the vehicle has been sold and therefore he cannot be made liable to compensate the 1st respondent/petitioner. However, neither the Registration Certificate nor the insurance policy had been transferred in the name of the subsequent owner and it is the 1st respondent's name which continues to be in the Certificate of Registration as well as in the insurance policy. Considering the fact that under the insurance policy, the insurance company had undertaken to compensate the injuries and death of the owner-cum-driver of the vehicle and as the person who had sustained injuries in the instant case is not the owner of the vehicle, the insurance company cannot be held liable to compensate the petitioner/claimant.

6. That apart, the accident has been caused by the rider of the bike himself and there is no third party involvement in the accident. Therefore, the insurance company cannot be held liable to compensate the claimant. In the judgment reported in ***2022 (2) LW 265 - The Divisional Manager, TATA AIG General Insurance Company Limited Vs. A.C.Jagadeesann and Other*** this Court had observed as follows;-

" The scheme of the Act contemplates 4 players - the victim, the driver of the offending vehicle, owner of the offending vehicle and lastly, its insurer. In any accident which results in any damage to person or property the person who is primarily at fault is the driver of the vehicle that caused the accident. Once, the fault is fixed on the driver, the owner of the vehicle becomes vicariously liable. At times the owner and the driver may be the same person. Thereafter, if the vehicle possesses a valid insurance then the insurer is bound to indemnify the owner of the vehicle. Therefore, considering the object of the Act and the judicial pronouncements, it is clear that a person claiming compensation under the "No Fault Liability" has to first establish a third party involvement in the mishap. The Judgment in ***United India Insurance Company Limited v Sunilkumar and another, [AIR 2017 SC 5710]****, only emphasis that the Insurer cannot set up the defence of negligence, it has not done away with the primary proof that the accident involved at third party intervention / involvement. "*

7. The judgment of the Hon'ble Supreme Court reported in ***2020 (2) SCC 550 - Ramkhiladi and another Vs. The United India Insurance Company and another*** has been followed in the above judgment. Therefore, considering the fact that the policy does not cover a third party driver and as the deceased was himself the tortfeasor, the insurance company cannot be made liable to compensate the claimant/petitioner. Consequently, the Civil Miscellaneous Appeal is allowed. The insurance company is exonerated from compensating the claimant. The claimant shall claim the said sum from the 1st respondent. No costs. Consequently, the connected Miscellaneous Petition is closed.

08.11.2022

Index : Yes/No
Internet: Yes/No
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To

1. Motor Accidents Claims Tribunal,
   District Court, Tiruvarur.

2.The Section Officer,
   V.R.Section,

High Court, Madras.

P.T. ASHA, J,

shr

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