BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON :23.03.2022

PRONOUNCED ON : 25.03.2022

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

C.M.A(MD)No.984 of 2021
and
C.M.P(MD)No.9279 of 2021

The New India Assurance Company Limited,
through its Manager, Divisional Office,
CMTS Bhavan, 70 Feet Road,
Ellis Nagar, Madurai District.
:Appellant/Second Respondent

.vs.

1.A.Palanichamy

2.A.Palaniammal : Respondents 1 and 2/Petitioners

3.Sridhar :Third Respondent/Ist Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act,1988, against the judgment and decree made in M.C.O.P.No.694 of 2019, dated 3.2.2021, on the file of the Motor Accidents Claims Tribunal, 6th Additional District Court, Madurai.

For Appellant :Mr.J.S.Murali

For Respondents 1 and 2 :Mr.N.Sudhagar Nagaraj for Mr.A.Theethar

JUDGMENT
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This Civil Miscellaneous Appeal is directed against the judgment and decree made in M.C.O.P.No.694 of 2019, dated 3.2.2021, on the file of the Motor Accidents Claims Tribunal/6th Additional District Court, Madurai.

2.The Insurance Company is the appellant herein, challenging the award passed in M.C.O.P.No.694 of 2019, on the ground of liability. The respondents/Claim Petitioners have filed the above claim petition alleging that on 20.03.2019, at about 17.40 hours, when the deceased was riding the two-wheeler bearing Registration

No. TN-59-BS-7809 belonging to the first respondent in Melur-Thiruppathur Main Road, from east to west, near Navinipatti, unfortunately, the first respondent's vehicle capsized and due to that, the deceased fall down and sustained fatal injuries and he died on the spot and that the accident had happened due to the first respondent's vehicle.

3.As per the pleadings and evidence,the deceased was riding the first respondent's two-wheeler at the time of accident from Melur to Thiruppathur road, from east to west in a rash and negligent manner, in an uncontrollable speed, without adhering to any of the traffic rules and regulations. While he was nearing Navinipatti Kaveriamman Koil, due to inordinate speed, he lost his control and the motor vehicle went off the road and dashed against the foot-steps of Kaveriamman Koil, which situates on the southern side of the mud road and the deceased died on the spot.

4.The Insurance Company is the appellant herein, challenging the award passed in M.C.O.P.No.694 of 2019 for awarding Rs.1 lakh under the Personal Accident Policy Coverage. The said award of Rs.1 lakh is under challenge in the present appeal.

5.According to the learned counsel for the appellant/Insurance Company, no premium has been paid and had drawn the attention of this Court to Ex.R1-Policy Copy. In the schedule, no amount has been paid.

6.The learned counsel for the respondents /claimants relied upon the judgment of the Division Bench of this Court in ***The Divisional Manager, United India Insurance Company Limited, Neyveli Township, Kurinjipadi Taluk .vs. R.Rekha and three others*** reported in ***2017(2) TN MAC 674(DB)*** and has stated that it is for Rs.15 lakhs.

7.Both from the pleadings and evidence, it is seen that the deceased had borrowed the motor cycle from the first respondent, before the Tribunal. Without the involvement of any other vehicle, he lost his speed, as he drove the vehicle in a high speed and dashed against the foot-steps of Kaveriamman Koil and fall down and sustained injury. He is a tort-feasor. There is no employer-employee relationship between the deceased and the owner of the vehicle. Since the claim petitioners are the legal representatives of the deceased, who borrowed the two-wheeler from the owner of the vehicle, has step into the shoes of the owner of the motor vehicle and hence, as per the decision in ***Ram Killadi's case***, the claim petition filed under Section 163(A) of the Motor Vehicles Act is not maintainable as against the Insurance Company. In view of the law laid down by the Honourable Supreme Court in the decision cited supra and in view of the fact that no premium was paid for the Personal Accident Policy Coverage, this Court has no other option except to allow the appeal filed by the Insurance Company and hence, the appellant/Insurance Company is exonerated from its liability to pay compensation to the claimants. It is open to the claim petitioners to proceed against the owner of the vehicle to realise the award amount, by following due process of law.

8.It is represented by the learned counsel appearing for the appellant/Insurance Company that 50% of the award amount has already been deposited to the credit of the claim petition. In view of the fact that, as per this judgment, the appellant/Insurance Company is exonerated from its liability to pay compensation to the claimant/s, the Tribunal is directed to refund the award amount so deposited to the appellant/Insurance Company with proportionate accrued interest, on filing necessary application.

9.With the above observations, the Civil Miscellaneous Appeal is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS II)

// True Copy //

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Sub Assistant Registrar(CS)

vsn

To

1.The VI Additional District Judge/
Motor Accidents Claims Tribunal,
Madurai.

2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.J.S.MURALI, Advocate (SR-14761[F] dated 28/03/2022)

+1 CC to M/s.N.SUDHAGAR NAGARAJ, Advocate (SR-15111[F] dated 29/03/2022)

C.M.A(MD)No.984 of 2021
and
C.M.P(MD)No.9279 of 2021
25.03.2022

MGJ(11.04.2022) 3P 6C