IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.12.2023

CORAM:

THE HONOURABLE MR.JUSTICE **M.DHANDAPANI**

C.M.A.No.730 of 2020

M/s. TATA AIG General Insurance Co. Ltd.,
Chennai – 600 041. ...Appellant

Vs.

1. Senbagavalli
2. Periyasamy
3. Akilandeswary
4. Pandian
5. Jagadeeswari
6. Mahalakshmi ...Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, as against the decree and judgment dated 27.08.2019 made in M.C.O.P.No.115 of 2014 by the Hon'ble Motor Accidents Claims Tribunal, (Principal District Court), at Perambalur.

For Appellant : Mr.J.Michael Visuvasam

For Respondents : Mr.S.Gopinathan, for R1, 3 & 5
R2 & R4 – Died.
No Appearance, for R6

JUDGEMENT

Challenging the judgment and decree dated 27.08.2019 passed in MCOP.No.115 of 2014 on the file of the Motor Accidents Claims Tribunal, (Principal District Court), Perambalur, the insurance company is before this Court.

2. The case of the appellant is that the respondents 1 to 5 filed a claim petition claiming a sum of Rs.15,00,000/- on the ground that on 15.09.2013, at about 10.00 p.m., when the deceased Krishnamoorthy was riding a two wheeler bearing Reg.No.TN-48-S-5272, owned by the 6th respondent, insured with the appellant insurance company, on the Uyyakondan Thirumalai main Road, near Uyyakondan River bridge upper side, the deceased lost his control and fell down in the Uyyakondan river, due to which, the deceased sustained grievous injuries and subsequently passed away. After contest, the Tribunal, vide impugned decree awarded a compensation of Rs.3,81,600/-. Aggrieved with the said order, the present appeal has been filed by the insurance company questioning the liability of the insurer.

3. Learned counsel appearing for the appellant submitted that the above said accident happened solely due to the negligence on the part of the deceased since, at the time of accident, the deceased was under the influence of alcohol and he was not in possession of valid licence and thereby, being a tort-feasor, the deceased is not entitled to claim compensation at the hands of the appellant /insurance company. Further, the claim made by the claimants under Section 163-A of the Motor Vehicles Act, 1988 (in short 'MV Act') itself is not maintainable, since claim petition either under Section 163-A or 166 of the MV Act can be filed only by the third parties and only in the case where the negligence aspect has to be ignored, the claim petition can be filed under Section 163-A of the MV Act. In the case on hand, the deceased having borrowed the vehicle in question from his sister/6th respondent and being the rider of the vehicle, he does not come within the ambit of third party. While so, without considering any of the said facts, the tribunal had fastened the entire liability as against the appellant, which is not sustainable. While so, without properly adjudicating any of the above said facts, the tribunal had passed the

impugned award fixing the entire liability as against the appellant insurance company, which is *per se* illegal. Accordingly, he prayed for appropriate orders.

4. Per contra, the learned counsel appearing for the respondents 1, 3 & 5 submitted that the deceased borrowed the vehicle in question from his sister and as he lost his control while driving, he fell down and subsequently died due to the injuries sustained by him at the time of accident and the respondents 1 to 5 have filed a claim petition under Section 163-A of the MV Act only for the purpose of ignoring the negligence aspect. Hence, after considering all the relevant documents, the Tribunal has rightly awarded the compensation, which does not require any modification. Accordingly, he prays for dismissal of the appeal.

5. Heard the learned counsel for the appellant and the learned counsel appearing for the respondents 1, 3 & 5 and perused the materials available on record.

6. The major issue that arises for consideration in the present appeal is whether the appellant/insurance company is liable to pay compensation for the death of the rider of the insured vehicle, though the said accident happened solely due to the negligence on the part of the deceased.

7. Insofar as not possessing valid driving licence is concerned, the parents of the deceased are aged persons and they may not be aware whether their son possessed valid driving licence at the time of accident or not and it is the duty of the appellant/insurance company to establish the same before the tribunal by examining necessary Motor Vehicles Inspector. While so, without doing the same, forcing the aged parents of the deceased to produce the appropriate driving licence is wholly unreasonable as the same will cause much more agony to them, after losing their son.

8. With regard to the consumption of alcohol by the deceased, though it is claimed by the appellant/insurance company that the deceased was under the influence of alcohol, however, in order to prove the same the body of the

deceased must have been sent for clinical examination as per Section 85 of the MV Act, which was not done so in the present case and mere hospital records are not sufficient to hold that the deceased was under the influence of alcohol. Without following the procedures mandated under the Motor Vehicles Act, placing reliance on a document filed by the claimants to prove the death of the deceased would not be suffice to hold that the deceased was under the influence of alcohol, which impaired his senses to such an extent that it jeopardized his driving resulting in his death.

9. Though it is the claim of the appellant that, the deceased is not a third party and thereby the claim made by the dependents under Section 163-A of the MV Act is not maintainable, however, as the owner of the vehicle paid premium for personal accident coverage for Rs.1,00,000/-, the deceased being the brother of the owner of the vehicle, is entitled to step into the shoes of the owner of the vehicle/6th respondent and is entitled for the said amount i.e.,Rs.1,00,000/-. Hence, this Court is inclined to award the said personal accident coverage of Rs.1,00,000/- and the computation of compensation made

by the Tribunal by awarding a sum of Rs.3,81,600/- is erroneous and the same requires modification.

10. Accordingly, this appeal stands partly allowed and the impugned award of the tribunal is modified by reducing the compensation amount from **Rs.3,81,600/-** to **Rs.1,00,000/-**. The appellant/Insurance Company is directed to deposit the said amount to the credit of M.C.O.P.No.115 of 2014 along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and costs as awarded by the Tribunal, less, the amount, if any already deposited, within a period of four (4) weeks from the date of receipt of a copy of this judgment. The said award amount shall be apportioned amongst the respondents 1 to 5/claimants as per the Award of the Tribunal. On such deposit being made, the Tribunal is directed to transfer the said amount directly to the bank account of the respondents 1 to 5 through RTGS within a period of two (2) weeks thereafter. Any amount, in excess of the award

ordered by this Court, which has been deposited by the insurance company, the insurance company is permitted to seek withdrawal of the same by filing necessary application before the Tribunal. There shall be no order as to costs in the present appeal.

14.12.2023

skt

Index : Yes / No
Speaking Order : Yes / No
Neutral Citation Case : Yes / No

To

1.The Motor Accidents Claims Tribunal, (Principal District Court),
Perambalur

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

M.DHANDAPANI, J.

skt

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