IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.06.2023

CORAM

THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN

C.M.A.No.2838 of 2016
and C.M.P.No.20558 of 2016

M/s.United India Insurance Co. Ltd
Branch Office, Siriya Pushpam Complex
Trichy Main Road, Ariyalur – 621 704 .. Appellant

Versus

1.A.Shusana
2.A.Jayarani
3.A.Mary Kamala
4.I.Arokiamary
5.A.Francies Xavier .. Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and Decree of the Motor Accidents Claims Tribunal (Additional District and Sessions Judge) Ariyalur made in M.C.O.P.No.252 of 2014 dated 14.06.2016.

For Appellant : Mr.D.Bhaskaran
For Respondents : No appearance for R1 to R5
No such person - R5

JUDGMENT

The Civil Miscellaneous Appeal has been filed against the Judgment and Decree of the Motor Accidents Claims Tribunal (Additional District and

Sessions Judge) Ariyalur made in M.C.O.P.No.252 of 2014 dated 14.06.2016.

2.The appellant herein is the Insurance Company seeking to challenge the award passed by the Tribunal in M.C.O.P.No. 252 of 2014 on the ground of liability.

3. The respondents are the claimants. For the sake of convenience, the parties are referred to as per their ranking before the trial Court. The factum of the accident and the manner of the accident is not in dispute.

4. During the trial before the Tribunal, the first claim petitioner examined herself as PW1. Exs.P1 to P11 were marked. Ex.P1 is the FIR, Ex.P2 is the Investigation Report, Ex.P4 is the legal heirs certificate copy and Ex.P11 is the Policy Copy. The Tribunal on consideration of both oral and documentary evidences came to conclusion that the deceased vehicle is insured with the appellant's Insurance Company and as per the policy condition, the Insurance Company is liable to pay the compensation to the claim petitioners and granted Rs.1,00,000/-.

5. The learned counsel for the Appellant Insurance Company vehemently contended that the Tribunal miserably failed to note that no premium was collected towards Personal Accident Cover from the deceased and they are not liable for the said accident. The fact that admission of RW1, who is an official examined on behalf of the company that the deceased had insured himself under a personal accident coverage policy is not at all correct in the present case. The Tribunal has not properly appreciated the documents exhibited before it. Hence, seeks to allow this Civil Miscellaneous Appeal.

6. Heard Mr.D.Bhaskaran, learned counsel for the Appellant Insurance Company and perused the records.

7. Admittedly, the facts of the present case are not dispute. The deceased Mr.Arulappa, on 16.07.2014, while driving in his two wheeler vehicle near Nachiarpettai to Varadharajanpettai, was hit by another vehicle. Due to the mishap, he died on the spot. The legal heirs of the deceased filed the claim petition in M.C.O.P.No.252 of 2014 before the above Tribunal. The Tribunal while adjudicating the case had solely relied in the case of *Bajaj Allianz*

General Insurance Co. Ltd Vs. C.Ramesh reported in *2013 (1) TNMAC 325* and awarded a compensation of Rs.1,00,000/- by putting liability on the head of the Insurance Company.

8. The learned counsel for the Insurance Company produced the certified copy of Ex.RW1 and the Chief Examination of the RW1. On perusal of both the cross and chief examination, I find that the RW1/Palanivel has not admitted that the deceased has insured himself under a Personal Accident Cover Policy for a sum of Rs.1,00,000/- as awarded by the Tribunal. Further, he also placed the copy of the Insurance Policy, which would also indicate that the deceased has not insured with any of the Personal Accident Covery Policy with the Insurance Company. This Court is at loss to understand as to how the Tribunal has granted such an award without properly appreciating the exhibits placed before it.

9. On a threadbare analysis of the case file, I find that in the impugned award, the Tribunal has simply relied on a citation of this Court in the case of *Bajaj Allianz General Insurance Co. Ltd Vs. C.Ramesh* reported in *2013 (1)TN MAC 325* and held that the above citation squarely applies to the present case

and had fixed Rs.1,00,000/- as done in the above reported case. The same is extracted below:

2013 (1) TN MAC 325

In the High Court of Madras

In the case on hand, relying on the decisions in Thilagavathy V.Sundaram, 1974 ACJ 491; Minu B.Mehta V.Balkrishna Ramachandra Nayan, 1977 ACJ 118; New India Assurance v. Susamma Varghese, 1990 ACJ 521; Kaliathal v.New India Assurance Co. Ltd., 2004 (1) TN MAC 135 (DB); and Dhanraj v.New India Assurance Co. Ltd., 2004 (2) TN MAC 144 (SC) : 2004 (4) CTC 716, the Appellant-Insurance Company has disputed the liability to pay compensation, stating that Personal Accident Cover Policy covers only third party risk and not to be injured himself, and that the owner cannot take advantage of his own negligence. The stand of the Insurance Company is contrary to the very purpose, for which, Personal Accident Covery Policy is taken. Admittedly, RW1, an official examined on behalf of the company, in his cross-examination, has admitted that the owner-cum-driver, has insured himself under a Personal Accident Covery Policy, for a sum of Rs.1,00,000/-, the maximum limit is under the Policy.

The above authority submitted by the petitioners counsel squarely applicable to this case. Hence, this Court is awarding Rs.1,00,000/- (Rupees one lakh only) in total as just compensation.

The deceased was the owner of the TN 31 Q 8293 vehicle and insured with the respondent at the time of accident as per the policy *condition the respondent company liable to pay compensation to the petitioners.*

10. On a reading, it would show that in the reported case, the RW1 has admitted in the cross examination that the owner-cum-driver has insured himself under a Personal Accident Covery Policy. The Tribunal before holding that the above case squarely applies to the present case ought to have properly appreciated the cross examination and chief examination of RW1 and the so-called Policy of the deceased. Unfortunately, the Tribunal has not done the same and has simply awarded the compensation as awarded in the reported judgment without even taking into consideration of the evidences of RW1.

11.Thus, this Court is of the view that the Tribunal before passing such an award as against the Insurance Company ought to have properly appreciated the facts and evidences placed before it. In view of the above discussion, this Court straight away quashes the Judgment and Decree of the Motor Accidents Claims Tribunal (Additional District and Sessions Judge) Ariyalur made in M.C.O.P.No.252 of 2014 dated 14.06.2016 and the same is hereby set aside.

12. Accordingly, this Civil Miscellaneous Appeal stands allowed.

Consequently, connected miscellaneous petition is closed. No costs. If the appellant/Insurance company has deposited any award amount before the Tribunal, then they are permitted to withdraw the said deposited amount with accrued interest by filing an appropriate application

27.06.2023

Internet : Yes/No
Speaking Order/Non-Speaking Order
dhk

To

The Presiding Officer,
Motor Accidents Claims Tribunal
(Additional District and Sessions Judge)
Ariyalur

A.A.NAKKIRAN, J.

dhk

C.M.A.No.2838 of 2016

27.06.2023