



C.M.A.No.1531 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.11.2023

CORAM:

THE HONOURABLE MR. JUSTICE K.RAJASEKAR

Civil Miscellaneous Appeal No.1531 of 2021

1.Raja

2.Indra

... Appellants / Petitioners

Vs.

1. S. Kumar

2. The Divisional Manager,
Reliance Insurance Company Ltd.,
Adams Road, Nungambakkam,
Chennai – 600 032.

... Respondents / Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and decree dated 24.01.2020 made in M.C.O.P.No.249 of 2018, on the file of the Motor Accidents Claims Tribunal, III Additional District Court, Vellore at Tirupattur.

For Appellants	:	Mr. V. Parivallal
For R1	:	Court
For R2	:	M/s. C. Bhuvanasundari



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JUDGMENT

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This Civil Miscellaneous Appeal has been filed by the claimants seeking to set aside the finding of the Tribunal in absolving the Insurance Company from paying the compensation for the negligent act committed by the driver of the car insured with the second respondent herein in the Award passed in M.C.O.P.No.249 of 2018, dated 24.01.2020 on the file of the Motor Accident Claims Tribunal, III Additional District Court, Vellore at Tirupattur.

2. The parties are referred to hereunder according to their litigative status and ranking before the Tribunal.

3. The claimants herein have come forward to seek compensation for the death of their son namely Kumar, who died in the road accident taken place on 04.06.2018 at about 4.00 a.m. According to them, their son Kumar is owner of Lorry bearing Registration No.TN 83 A 3235. He was also working as Cleaner in his Lorry. On the date of accident, he accompanied his driver on the Chennai – Bangalore Highway and the driver lost control and dashed behind a lorry which resulted in causing severe injuries to him. Subsequently, succumbed to the injuries. The claimants have



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approached before the Tribunal seeking compensation of Rs.25,00,000/- for the death of their son by invoking Section 166 of the Motor Vehicles Act. In this case, the claimants have added the deceased Kumar as a party since he is the owner of the lorry.

4. The second respondent is the insurer of the lorry filed counter and contended that the compensation has been claimed for the death of the owner of the vehicle and there is no third party involvement in the accident. Since the driver of the lorry is employee of the Kumar, who is also tortfeasor, the owner of the vehicle is not entitled to claim compensation under Section 166 of the Motor Vehicles Act and prayed to dismiss the claim petition.

5. Based on the evidence placed on record, the Tribunal has considered the liability of the Insurance Company has held that since the deceased himself is the owner of the vehicle, he could not be termed as a cleaner or third party. However, awarded compensation by invoking personal coverage as per policy.



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6. Aggrieved over the above findings, the claimants have approached this Court seeking enhancement of compensation.

7. Mr. V. Parivallal, learned counsel for the claimants has submitted that the deceased Kumar as the owner of the vehicle is entitled for compensation under personal accident coverage. Apart from that, the driver of the lorry has driven the vehicle in negligent manner and caused the accident. The deceased travelled in vehicle as cleaner. Hence, he is entitled to get compensation from the Insurance Company.

8. Admittedly, the case of the claimants is that the lorry belongs to the deceased himself and driver was employed by him and he is the tortfeasor. The owner of the vehicle is responsible to pay compensation under the principle of vicarious liability to the tortious act done by the driver and as per the contract of insurance entered between the owner of the vehicle and the Insurance Company, the Insurance Company shall indemnify the vicarious liability of the owner of the vehicle. (Refer ***Shamanna and Ors vs. The Divisional Manager, The Oriental Insurance Co. Ltd., and Ors*** [MANU/SC/0828/2018 : 2018 (9) SCC 650]).



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9. In this case, on behalf of owner of the vehicle, the Insurance Company sought to pay compensation. The claimants who claimed compensation for the death of the deceased for the tortious act committed by the driver of the lorry is not entitled to claim compensation since the owner of the vehicle himself is the deceased in this case and he cannot claim compensation for the tortious act committed by his own employee. The owner of the vehicle is entitled to get compensation if it is proved that owner of vehicle is also covered by insurance policy by invoking personal accident coverage.

10. When the Court raised a question, who is the employer of the deceased, no proper answer placed before me. The owner of vehicle who has travelled in his lorry may have travelled to assist the driver, but he could not steps into the definition of employee since, he is owner and employed the driver of lorry and he chosen to render assistance to the driver. Schedule of premium shows that, there is separate Personal Accident Coverage for owner, under the said circumstances, the deceased shall not entitled for any compensation. Accordingly, this Court finds that there is no infirmity in the Order of the Tribunal and no merits in the appeal.



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11. In the result, this Civil Miscellaneous Appeal filed by the claimants is dismissed. The Award passed by the Tribunal in M.C.O.P.No.249 of 2018, dated 24.01.2020 is hereby confirmed. There shall be no order as to costs in the present appeal.

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Index: Yes/No

Speaking Order: Yes/No

Neutral Citation Case: Yes/No

To:

1. The III Additional District Judge,
Motor Accidents Claims Tribunal,
Vellore at Tirupattur.
2. The Section Officer,
V.R.Section,
High Court,
Chennai.

K.RAJASEKAR,J.

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