IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 14.07.2023

CORAM:

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

C.M.A.No.450 of 2022
and C.M.P.No.3227 of 2022

The Branch Manager,
United India Insurance Company Limited,
Situated at 1st floor, D.M.Building,
No.1 A, Salem Main Road,
Kallakurichi ...Appellant

Vs.

1.Saraswathi
2.Lakshmi Kumar
3.C.Gokul Kumar ...Respondents

PRAYER : The Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 22.10.2021 in M.C.O.P.No.390 of 2018 on the file of the Motor Accident Claims Tribunal, III Additional District Judge, Kallakurichi.

For Appellant : Mr.D.Bhaskaran
For Respondents : No appearance

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant/Insurance Company challenging the award dated 22.10.2021 in M.C.O.P.No.390 of 2018 on the file of the Motor Accident Claims Tribunal, III Additional District Judge, Kallakurichi.

2.The respondents herein filed the claim petition claiming a sum of Rs.50,00,000/- as compensation for the death of one Chinnakannu, who died in the accident that took place on 14.09.2011. According to the respondents, on the date of accident i.e., on 29.03.2018 at 01.00 p.m., while the deceased Chinnakannu drove his vehicle bearing Registration No.TN 15 X 5767 on Elavanasurkottai to Asanur Road, at that time one Ragavendra, aged 12 years, suddenly crossed the road with his bicycle and to avoid the accident, the deceased suddenly applied the brake and unfortunately dashed against the bicycle and hit the road side Tamarind tree and caused the accident. In the accident, the deceased sustained fatal injuries and died on the spot. Hence, they were entitled to a claim of Rs.50,00,000/-.

3.The appellant/Insurance Company filed a counter statement denying the averments made by the respondents and contended that the accident took place only due to the rash and negligent driving by the deceased and met with an accident. In any event, the compensation claimed by the respondents is excessive and prayed for dismissal of the claim petition.

4.Before the Tribunal, the respondents examined two witnesses as P.W.1 and P.W.2 and marked 17 documents as Exs.P1 to P17. The appellant/Insurance Company examined one Rajendhiran, the Development Officer as R.W.1 and marked two documents as Exs.R1 and R2.

5.The Tribunal considering the pleadings, oral and documentary evidence, found that the claim petition has been filed under Section 163(A) of M.V.Act and the negligence need not be established on the part of the rider/deceased and held that the respondents are entitled to Rs.2 lakhs as the deceased paid premium of Rs.100/- for owner-cum-driver. Apart from that, the Tribunal has awarded compensation under the other heads “loss of dependency, loss of consortium, funeral expenses, loss of love and affection and loss of estate” for a sum of Rs.3,80,000/- to the respondents.

6.Against the said award dated 22.10.2021 in M.C.O.P.No.390 of 2018 granting compensation to the respondents, the appellant/Insurance Company has come out with the present appeal.

7.The learned counsel for the appellant submitted that the Tribunal had erroneously found that the claim petition was filed under Section 163(A) of M.V.Act, but the petition was filed only under Section 166(1) of M.V.Act. The learned counsel further submitted that in any case that would not make a difference in the facts and circumstance of the case. He further submitted that the deceased was only entitled to Rs.2 lakhs under the policy, he had paid premium of Rs.100/- for personal accident coverage and the limit was Rs.2 lakhs as per the policy condition. The deceased being the driver of the insured vehicle is not entitled to compensation either Section 163(A) of M.V.Act or Section 166 of M.V.Act, in the absence of involvement of any other vehicle in the accident. The learned counsel relied upon the judgment of the Hon'ble Division Bench of this Court in C.M.A.1150 of 2017 *(National Insurance Company Limited Vs. Karuppiah and others).*

8.Though notice has been served on the respondents, there was no representation for the respondents on 11.07.2023 and therefore, the matter has been listed today. Even today i.e., on 14.07.2023, there was no representation for the respondents.

9.This Court on perusal of the records and on hearing the submissions made by the learned counsel for the appellant finds that the Tribunal has erroneously observed that the claim petition has been filed under Section 163(A) of M.V.Act. The first paragraph of the order clearly shows that the claim petition was filed under Section 166(1) of M.V.Act. Be that as it may, this Court is of the view that the learned counsel for the appellant is right in saying that there is no difference as to whether the claim petition is filed under Section 163(A) M.V.Act or Section 166 of M.V.Act in the facts of this case. The deceased being insured cannot be both the claimant as well as the recipient. The relevant portion of the judgment of the Hon'ble Apex Court in the case of Oriental Insurance Company Limited Vs. Rajni Devi and Others reported in (2008) 5 SCC 736 is extracted hereunder for better understanding:

> *"11.The liability under Section 163-A of the act is on the owenr of the vehicle as a person cannot be both, a claimant as also a recipient. The heirs of Janak Raj could not have maintained a claim in terms of Section 163-A of the Act. For the said purpose only the terms of the contract of insurance could be taken recourse to."*

10.Further this Court finds that the Division Bench of this Court in *C.M.A.No.1150 of 2017* in the case of *Nation Insurance Company Cs. Karuppiah and others* had occassion to consider an identical question and it observed as follows:

"5.The question that arises for consideration is as to whether the insurer is liable to pay compensation to the legal representatives of the owner of the vehicle who died in the accident involving the vehicle insured with the Insurance Company.

6. The legal question raised by the appellant is no longer res integra in view of the string of decisions of the Hon'ble Supreme Court.

7 (a) The Hon'ble Supreme Court in Oriental Insurance Company Limited Vs. Rajni Devi and others, (2008(5) SCC 736) considered the question as to whether Section 147 of the Motor Vehicles Act mandates the Insurance Company to assume the risk for death or bodily injury to the owner of the vehicle.

(b) The Hon'ble Supreme Court held that the liability on the owner of the vehicle as a person cannot be both, a claimant as also a recipient. The Supreme Court was of the view that the matter which is in the realm of contract and there being no provision in the contract for indemnifying the owner for his own death, such a claim by the legal representatives of the deceased owner is not maintainable.

8. The Hon'ble Supreme Court in Oriental Insurance Company Vs. Jhuma Saha and others, 2007(9) SCC 263, held that unless there is a clear statement in teh policy covering any risk for the owner himself, the Insurance Company is not liable to pay compensation on account of the death of the insured.

9. The Hon'ble Supreme Court in Dhanraj Vs. New India Assurance Company Limited and anr., (2004 (8) SCC 553) held that an insurance policy covers the liability incurred by the insured in respect of death of or bodily injury to any person (including an owner of the goods or his authorised representatives) carried in the vehicle or damage to any property of a third party caused by or arising out of the use of the vehicle. According to the Supreme Court, Section 147 does not required an insurance company to assume the risk for death or bodily injury to the owner of the vehicle.

10. The legal position is therefore very clear that there is no contractual liability on the part of the Insurance Company to indemnify the legal representatives of the insured on account of his death."

Therefore this Court is of the view that unless there is a clear statement in the policy covering risk for the owner, the legal heirs of the deceased owner would not be entitled for any compensation. In the instant case, admittedly the deceased has taken a personal accident coverage and paid a premium of Rs.100/- and therefore, entitled to an insurance amount upto a limit of Rs.2 lakhs. The Tribunal has rightly awarded the said sum as payable by the insurance company. It is also reported by the learned counsel for the appellant that the appellant has already paid the said sum to the respondents. The Tribunal, in addition to the said amount, has awarded Rs.3,80,000/- under other heads. In view of the settled position of law, this Court finds that the said award is erroneous and the same is liable to be set aside.

11. It is also reported by the learned counsel for the appellant that the appellant has deposited a sum of Rs.25,000/- at the time of admission and the appellant is entitled to refund of the same.

12. In the result, this Civil Miscellaneous Appeal is allowed and the compensation of Rs.3,80,000/- awarded by the Tribunal is hereby set aside. Since the claimants/respondents have already received the assured amount of Rs.2,00,000/-, no further orders are required. The appellant/Insurance Company is

permitted to withdraw Rs.25,000/- lying in the deposit to the credit of M.C.O.P.No.390 of 2018 on the file of Motor Accident Claims Tribunal, III Additional District Judge, Kallakurichi. Consequently, connected Miscellaneous Petition is closed. No costs.

14.07.2023

Index: Yes/No
Internet: Yes/No
vkr

To

1.The Motor Accident Claims Tribunal,
III Additional District Judge, Kallakurichi.

2.The Section Officer
VR Section, High Court of Madras.

SUNDER MOHAN,J.

vkr

C.M.A.No.450 of 2022

14.07.2023