



C.M.A.No.3864 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.10.2023

CORAM:

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

C.M.A.No.3864 of 2019

and

C.M.P.No.22082 of 2019

Tata AIG General Insurance Company Ltd.,
represented by its Branch Manager, having
Office at Dharmapuri Town.

... Appellant/2nd respondent

Vs.

1. Subramanian
2. Shanthi
3. Iyyappan
4. Minor Anupriya
5. Minor Nithyapriya

(Minor respondents 4 and 5 represented by their Mother and Guardian,
the 1st respondent)

... Respondents/petitioners

6. Jayaraman

...Respondent / 1st respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the decree and judgment dated 23.03.2017 made in M.C.O.P.No.156 of 2015 on the file of Motor Accident Claims Tribunal, District Court, Nagapattinam.



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For Appellants : Mr.K.Vinod

For Respondents : Mr.Ma.Pa.Thangavel for
M/s.M.Logesh for R1 to
R5

No appearance for R6

JUDGEMENT

The appeal is preferred by the claimants against the decree and judgment dated 23.03.2017 made in M.C.O.P.No.156 of 2015 passed by the Motor Accident Claims Tribunal, District Court, Coimbatore.

2. It is the case of the insurance company that on 24.06.2014 at about 9:00 pm, when the deceased was riding a motorcycle bearing registration No.TN 29 AC 7672, allegedly without a valid driving licence, he dashed the vehicle against a small wall in front of the Mariamman Temple and died on spot inspite of the treatment given. Thereafter, the family members of the deceased filed a petition before the Motor Accident Claims Tribunal in M.C.O.P.No.156 of 2015 and the Tribunal vide order dated 23.03.2017 has awarded a sum of Rs.2,75,000/- as compensation. Challenging the same, the

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claimant / insurance company has preferred the present appeal.

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3. The learned counsel appearing for the appellant / insurance company submitted that, though the owner of the vehicle / sixth respondent had paid for the personal accident coverage policy and as per the contract of insurance, in case of personal accident, the owner – driver is entitled only to a sum of Rs.1 lakh. However, in the present case on hand the deceased did not possess a valid driving licence and without obtaining the permission of the owner of the vehicle, he had driven the vehicle in a rash and negligent manner and dashed against a wall, due to which he died. Though all those facts were well established before the Tribunal, the present decree had come to be passed, which is contra to the decision rendered by this Court in C.M.A.No.2773 of 2016, dated 13.10.2020 and, therefore, awarding compensation to the tune of Rs.2,75,000/- is wholly unsustainable. Hence, he prayed to allow this appeal.

4. Per contra the learned counsel appearing on behalf of the



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respondents 1 to 5 submit that admittedly the sixth respondent is the owner of the vehicle who paid the personal accident coverage to the appellant / insurance company, in which the deceased is entitled to the personal accident coverage of Rs.1,00,000/-. However, the Tribunal has awarded a sum of Rs.2,75,000/- on holistic consideration which has to be indemnified by the insurance company and if at all the insurance company wants, it can recover the balance amount from the owner of the vehicle and, therefore, no interference is warranted with the order passed by the court below.

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

6. It is the specific case of the insurance company that the deceased was not possessed of a valid driving licence. Neither before the Tribunal nor before this Court the possession of a valid licence by the deceased had been proved by the claimants. Further, the deceased without obtaining the



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permission of the owner had used the vehicle and driven the same in a rash and negligent manner and had caused the accident in which he died.

7. The insurance company had relied on the decision of this Court in C.M.A.No.2773 of 2016 dated 13.10.2020, wherein, this Court, following the decision rendered by the Hon'ble Apex Court the case of ***Ram Khiladi & Anr. Vs. The United India Insurance Company and Anr.*** reported in ***2020 (1) CTC 443*** has held that, if the driver possess a valid driving licence, the insurer has to compensate the owner-cum-driver under PA cover within six months from the date of accident to espouse its submission that the deceased was not possessed of a valid driving licence and, therefore, not entitled to any compensation. In the present case on hand, the deceased did not possess a valid driving licence as no document has been marked before the Tribunal. When such being the case, the claimant cannot step into the shoes of the owner of the vehicle who paid the personal accident coverage to claim compensation, even if PA cover has been taken on the policy. The person, who uses the vehicle, with the permission of the owner, steps into



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the shoes of the owner, but equally has to satisfy the other conditions of the contract, including possession of a valid driving licence. In the absence of any substantive material to show that the deceased was in possession of a valid driving licence, the stand of the insurance company that it is not liable to compensate the claimants is wholly justified.

8. For the reasons aforesaid, the appeal is allowed and the impugned Award of the Tribunal is set aside. The Insurance Company is directed to withdraw the entire amount if any deposited by the Insurance Company to the credit of MCOP No.156 of 2015 within a period of two (2) weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes / No
speaking Order : Yes / No
Neutral Citation Case : Yes / No
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To

- 1.The Motor Accident Claims Tribunal/District Court, Nagapattinam
- 2.The Section Officer, V.R. Section, High Court, Madras.



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M.DHANDAPANI,J.,

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