BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **19.06.2023**

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THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.1335 of 2009

United India Insurance Company Limited,
Through its Branch Manager,
Thiruverumbur, Trichy. ... Appellant/2nd Respondent

Vs.

1.Prema Rajan

2.R.C.Sujatha ... Respondents/Petitioners

3.J.W.D.Rajan ... Respondent/1st Respondent

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, to set aside the award passed in M.A.C.O.P.No.388 of 2002, dated 09.07.2009 on the file of the Motor Accident Claims Tribunal, II Additional Sub Judge, Trichy.

For Appellant : M/s.M.Sudha Rani
for Mr.S.Ram Subramanian

For Respondents : No Appearance

JUDGMENT

The present appeal has been filed by the insurance company challenging the award passed by the Motor Accident Claims Tribunal in M.A.C.O.P.No.388 of 2002 primarily on the ground of liability.

2. The claimants who are the parents of the deceased have contended that their son had driven a two wheeler on 18.09.2001 and when he applied sudden brake to avoid dashing against a pedestrian, he fell down and sustained head injuries and he passed away on 01.10.2001. The claim petition has been filed under Section 163-A of the Motor Vehicles Act claiming compensation of Rs.8,00,000/-.

3. The insurance company had filed a counter contending that the policy does not cover the rider of the motor cycle. In case, if they could claim any compensation, it could be claimed only from the father of the deceased person who is the owner of the two wheeler.

4. The tribunal after considering the oral and documentary evidence, has arrived at a finding that the accident has taken place only due to the rash driving on the part of the deceased person. Though the tribunal has considered the defence raised by the insurance company, yet

it rejected the said contention on the ground that it is highly technical in nature. Challenging the said award, the present appeal has been filed by the insurance company.

5. According to the learned counsel appearing for the appellant, though the vehicle had a package policy, which is marked as Exhibit R.1, the deceased is a borrower of a two wheeler from his father. No other vehicle was involved in the said accident. The accident has taken place only due to rash and negligent driving on the part of the deceased person. Therefore, the petition under Section 163-A is not maintainable. The tribunal had erroneously held that such a defence is highly technical in nature. Hence, she prayed for allowing the appeal.

6. The learned counsel for the claimants have contended that the contract of insurance is between the owner of the vehicle and the insurance company. Therefore, the deceased who had driven the vehicle should only be treated as a third party and therefore, the policy covers the injury or death to such a third party. Hence, he prayed for confirming the award passed by the tribunal.

7. I have carefully considered the submissions made on either side and perused the material records.

8. Even as per the averments in the claim petition, the deceased had borrowed the two wheeler from his father and he had driven the vehicle and lost his balance, fell down, sustained injuries and passed away. Though the claim petition was originally filed under Sections 140 and 166 of Motor Vehicles Act, it was amended to a claim petition under Section 163-A.

9. The Hon'ble Supreme Court in a judgment reported in ***2020 (2) SCC 550 (Ramkhiladi & Another Vs. United India Insurance Company & Another)*** has categorically held that a claim petition under Section 163-A is not maintainable by the borrower of a vehicle. Therefore, the tribunal was not right in holding that the insurance company has taken a highly technical defence.

10. A perusal of the policy which is marked as Exhibit B.1 indicates that it is a package policy and there is a personal accident coverage to the owner/driver to an extent of Rs.1,00,000/-. The borrower of the vehicle could be treated as the owner of the vehicle and therefore, he is entitled to receive the said amount of Rs.1,00,000/- as compensation. Therefore, the award of the tribunal is reduced from Rs. 3,37,000/- to Rs.1,00,000/-. The said amount will carry interest at 7.5%

from the date of claim petition. Both the claimants shall share the award amount equally. The excess amount shall be refunded to the appellant along with accrued interest. The claimants shall be entitled to withdraw Rs.1 Lakh along with accrued interest and proportionate cost.

11. In view of the above said observations, this Civil Miscellaneous Appeal stands partly allowed to the extent as stated above. No costs.

19.06.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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To

1.The Motor Accident Claims Tribunal,
II Additional Sub Judge,
Trichy.

2.The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

R.VIJAYAKUMAR,J.

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Judgment made in
C.M.A(MD)No.1335 of 2009

19.06.2023