BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **11.04.2023**

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.1795 of 2013

The Divisional Manager,
United India Insurance Company Limited,
No.74, Railway Feeder Road,
Virudhunagar. ... Appellant / Respondent No.2

Vs.

1.Mahalakshmi
2.Kamali
3.Minor Madhumathi
4.Chelliah
5.Chellammal
6.Magalingam ... Respondents/ 1st Respondent

(The minor third respondent is represented by their mother and natural guardian first respondent)

(Minor second respondent is declared as major and the guardianship of her mother / R1 is discharged vide Court order dated 30.03.2023 made in C.M.P(MD)Nos.4013 & 4014 of 2023 in C.M.A(MD)No.1795 of 2013)

PRAYER : This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 06.12.2012 passed in M.C.O.P No.91 of 2011 on the file of the Hon'ble Motor Accident Claims Tribunal, (Additional District Judge) Virudhunagar.

For Appellant : Mr.G.Prabhu Rajadurai
For R-1 to R-5 : Mr.A.Sivaji

For R-6 : No appearance

JUDGMENT

The present Civil Miscellaneous Appeal has been filed by the United India Insurance Company challenging the award passed by the Motor Accident Claims Tribunal, Virudhunagar primarily on the ground of liability.

2. According to the claim petition, the deceased, namely, Mariappan had borrowed the two wheeler belonging to the first respondent in the claim petition and he had driven the vehicle on

02.02.2010. While he was driving the vehicle, a Buffalo had crossed the road and in order to avoid dashing against the said Buffalo, the deceased had suddenly applied brakes. Hence, he lost control of vehicle and he fell on the road. Due to the said accident, the deceased sustain injuries and he passed away on 22.02.2010. The claimants have prayed for a sum of Rs.8,00,000/- towards compensation. The said claim petition has been filed under Section 163-A of the Motor Vehicle Act. The owner of the vehicle had remain *ex parte* and the Insurance Company has filed a counter contending that the deceased himself was a tort-feasor and therefore, the claimant cannot make claim for any compensation from the owner. Therefore the question of indemnifying the same by the Insurance Company does not arise.

3. The Tribunal after considering the oral and documentary evidence came to a conclusion that the deceased was a third party to the contract of insurance. Therefore, the policy covers the injury or death of a person who has used the said vehicle. The Tribunal further found that when the application is filed under Section 163-A of the Motor Vehicle

Act, there is no obligation on the part of the claimants to establish negligence on the offending vehicle. Based upon the said findings, the Tribunal proceeded to award a sum of Rs.5,05,000/- as compensation. This award is under challenge in the present appeal.

4. The learned Counsel for the appellant had contended that the two wheeler in which the deceased had travelled belonged to the first respondent in the claim petition. The deceased had borrowed the said vehicle and while he had driven the said vehicle, he met with an accident and he had passed away. No other vehicle was involved in the said accident. Though a claim petition under Section 163-A of the Motor Vehicle Act is maintainable in the present case, the deceased being a borrower of the vehicle from the owner, he enters into the shoes of the owner. Therefore, it should be construed that the owner himself had driven the vehicle and had sustained injuries. The owner cannot claim compensation from his own Insurance Company, unless there is a personal accident coverage. In the present case, the policy is a package policy covering own damage and third party claims. No premium has

been paid towards personal accident coverage. Hence, viewed from any angle, the claimants are not entitled to seek any compensation for the death of the deceased Mariappan.

5. Per contra, the learned Counsel for the respondent / claimant had contended that the policy being a package policy. It covers the pillion rider also. He further contended that the claim petition having been filed under Section 163-A of the Motor Vehicle Act, the claimants are not mandatorily called upon to prove the negligence on the part of the deceased person. He further contended that the deceased is neither the insurer nor the insured person. Therefore, he should be treated only as a third party to the insurance policy. Being a third party, he is covered by the insurance policy and entitled to receive compensation.

6. I have carefully considered the submissions made on either side and perused the materials available on record.

7. It is an admitted fact that the deceased had borrowed the vehicle

belonging to the first respondent in the claim petition and he had driven the vehicle. While the deceased had attempted to avoid dashing against a Buffalo, he had lost control of the vehicle and he had fallen down, sustain injuries and passed away after twenty days. The manner of accident as explained in the claim petition will clearly indicate that no other vehicle was involved in the said accident. The claim petition has been filed as against the owner of the vehicle and his Insurance Company.

8. As rightly contended by the learned Counsel for the appellant when a person borrows a vehicle from the owner, he enters into the shoes of the owner. Therefore, it has to be construed that only the owner has used the vehicle and he has sustained injuries. In such an event, the question of indemnifying the owner would not arise by the same Insurance Company, in which the vehicle is insured.

9. The Hon'ble Supreme Court in a judgment reported in ***2020 (2) SCC page 550 (Ramkhiladi and Others Vs. The United India***

Insurance Company and Others) has held that mere own-use of motor vehicle by owner / borrower / permissive user does not entitle such person(s) to maintain Section 163-A petition against insurer of their own / borrowed vehicle-owner / borrower / permissive users are not "third parties" in relation to their own / borrowed vehicle and hence are not covered by statutory insurance under Section 147 of the Motor Vehicle Act.

10. In view of the judgment of the Hon'ble Supreme Court, the award of the Tribunal in favour of the claimants treating the deceased as a third party is not legally sustainable. That apart, a perusal of Exhibit R1 insurance policy clearly indicates that the premium has been paid for own damage and third party claims only. No premium has been paid towards personal accident coverage. Therefore, viewed from any angle, the claimants are not entitled to receive any compensation. However, the Tribunal has erroneously directed the Insurance Company to pay a compensation.

11. In view of the above said deliberations, the award of the Tribunal is hereby set aside and the claim petition stands dismissed. Hence, this Civil Miscellaneous Appeal stands allowed. The amount deposited by the Insurance Company shall be refunded along with accrued interest. There shall be no order as to costs.

11.04.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
BTR

To

1.The Motor Accident Claims Tribunal, (Additional District Judge),
Virudhunagar.

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

R.VIJAYAKUMAR, J.

BTR

Order made in
C.M.A(MD)No.1795 of 2013

11.04.2023