BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **03.04.2023**

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.123 of 2019

The Branch Manager,
Iffco-Tokio General Insurance Company Ltd.,
3rd Floor, Payyil Kohinoor,
Sanakarnthi (Po),
Kottaiyam District,
Kerala State-686 028. ... Appellant/3rd Respondent

Vs.

1.Saroja

2.M.Premkumar

3.M.Sureshkannan

4.M.Ashok Kumar ... Respondents/Petitioners

5.Anilkumar

6.Sureshkannan ... Respondents/Respondents 1&2

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, to set aside the judgment and decree, dated 01.09.2018 passed in M.C.O.P.No.128 of 2016 on the file of the Motor Accident Claims Tribunal Judge [Additional District Judge (FTC)] of Theni by allowing this appeal.

For Appellant : Mr.V.Sakthivel

For R1-R4 : Mr.K.Suresh Kumar

For R5&R6 : No Appearance

JUDGEMENT

The present appeal has been filed by the insurance company challenging an award passed by the Motor Accident Claims Tribunal, Theni in M.C.O.P.No.128 of 2016 primarily on the ground of liability.

2. The deceased, by name Maduraipandian had driven a private auto owned by his son Suresh Kannan. While he was driving the said vehicle on 02.10.2016, he had to apply sudden brake due to the crossing of a dog and it resulted in capsizing of the private auto. In the said accident, the deceased, namely Maduraipandian had passed away. The claimants, namely his wife and his 3 sons have filed the claim petition claiming a sum of Rs.20,00,000/- from the insurance company of the private auto which was driven by the deceased.

3. The insurance company had filed a counter contending that the accident has happened only due to the rash and negligent driving of the deceased and therefore, they are not liable to pay any compensation.

4. The tribunal after considering the oral and documentary evidence arrived at a finding that the accident has occurred only due to the rash and negligent act of deceased Maduraipandian who is the driver of the auto belonging to his son Suresh Kannan. The tribunal further proceeded to hold that the insurance company is liable to pay the compensation on the ground that an additional premium of Rs.20/- has been paid for the passenger and another premium of Rs.50/- has been paid for the driver. Thereafter, the tribunal proceeded to fix the total compensation at Rs.11,67,000/-. This award is under challenge in the present appeal.

5. According to the learned counsel appearing for the appellant, the private auto was owned by one Suresh Kannan, who is shown as the 3rd claimant and also the 2nd respondent in the claim petition. The deceased Maduraipandian is the father of the said Suresh Kannan. At the time of accident, the deceased Maduraipandian had borrowed the vehicle from Suresh Kannan and he had driven the vehicle and the accident has taken place. Therefore, the deceased should only be considered to be a borrower of the vehicle from the original owner of the private auto. The borrower of the vehicle should be considered to be a person entering into the shoes of the owner. In the present case, there is no offending vehicle.

Therefore, the owner cannot claim compensation from his own insurance company. Hence, he contended that the award of the tribunal directing payment of compensation by the insurance company is not legally sustainable.

6. Per contra, the learned counsel appearing for the respondents/claimants had contended that the deceased Maduraipandian was driving the private auto at the relevant point of time. Therefore, he should be considered to be a driver of the private auto. The learned counsel appearing for the respondents further contended that the separate premium has been paid for the driver under I.M.T.28 at Rs.50/-. Therefore, the insurance company is liable to pay the compensation and the award of the tribunal may not be disturbed.

7. I have carefully considered the submissions made on either side.

8. Admittedly, the private auto which met with the accident was owned by one Suresh Kannan and it was driven by his father, deceased Maduraipandian at the time of accident. It is not the case of the claimants that the deceased who is the father of the owner of the vehicle was a paid driver. Only the paid driver is covered under the insurance policy under I.M.T.28. Therefore, the father not being the paid driver of his son,

cannot claim compensation from the insurance company.

9. When the father drives the vehicle belonging to the son, he should only be considered to be a borrower of the vehicle from his son and therefore, he had entered into the shoes of the owner of the vehicle. Being owner of the vehicle, he is not entitled to make any claim as against his own insurance company. In other words, the owner is not a third party to the contract of insurance and therefore, he is not entitled to receive any compensation from his own insurance company. However, a perusal of the policy indicates that personal accident cover is there for owner/driver and a premium of Rs.100/- has been paid. The father who has entered into the shoes of the son as owner of the vehicle, should only be considered to be the owner cum driver of the vehicle and therefore, he is entitled to the personal accident cover policy. Admittedly, the deceased Maduraipandian was having an effective and valid driving license at the time of accident. Therefore, he is entitled to receive compensation from the insurance company under the personal accident coverage, namely a sum of Rs.2,00,000/-.

10. In view of the above said deliberations, the award of the tribunal to an extent of Rs.11,67,000/- granting compensation under

Section 166 of the Motor Vehicles Act is not legally sustainable. The deceased being the father of the owner of the vehicle, he cannot even make a claim under Section 163-A of Motor Vehicles Act. Therefore, viewed from any angle, the deceased could make a claim only under the personal accident coverage.

11. In view of the above said deliberations, the award of the tribunal is set aside and the appeal stands allowed. The award is modified to the effect that the claimants are entitled to receive a sum of Rs. 2,00,000/- (Rupees Two Lakh only) with 7.5% interest from the date of claim petition. The excess amount deposited by the insurance company shall be refunded to the appellant insurance company along with accrued interest.

12. With the above said observations, this Civil Miscellaneous Appeal stands allowed to the extent as stated above. No costs.

03.04.2023

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

1.The Motor Accident Claims Tribunal Judge
[Additional District Judge (FTC)],
Theni.

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

R.VIJAYAKUMAR ,J.

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Order made in
C.M.A(MD)No.123 of 2019

03.04.2023