



C.M.A.(MD).No.610 of 2022

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.06.2023

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.M.A.(MD).No.610 of 2022

and

C.M.P.(MD).No.10469 of 2022

The Divisional Manager,
New India Assurance Company Limited,
No.252, Kamarajar Salai,
Madurai.

... Appellant

-Vs-

1.Siddhi Ayisha Ammal
2.Apsalshah
3.Ashwarshah
4.Harshadshah
(Minors R2 to R4 are represented by their mother
and guardian, the first respondent herein)
5.Manosh Don

... Respondents

PRAYER: The Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree in M.C.O.P.No. 262 of 2019, dated 25.10.2021 on the file of the Motor Accident Claims Tribunal, Principal District Court, Ramanathapuram.

For Appellant : Mr.J.S.Murali

For R1 to R4 : Mr.J.M.Hassanul Bazari

For R5 : No appearance



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J U D G M E N T

Challenging the award passed by the Motor Accident Claims Tribunal, Principal District Court, Ramanathapuram in M.C.O.P.No.262 of 2019, dated 25.10.2021, the Insurance Company has filed the present appeal.

2. The brief facts leading to the filing of this appeal are as follows:

On 06.01.2016, at about 5.15 p.m., while the deceased was riding a motorcycle, due to some rope tied in the road, the motorcycle fell down and the deceased succumbed to injuries. He was a fisherman by profession. According to the claimants, he was earning a sum of Rs.5,000/- per month. The first respondent took a stand before the Tribunal that the vehicle bearing Registration No.TN 65 P 6782 originally purchased on hire purchase from Sriram City Union Finance and thereafter the vehicle has been sold to third parties and the deceased become an ultimate owner of the property and the deceased himself drove the motorcycle in a rash and negligent manner and invited the accident. The second respondent/Insurance Company took a stand that the deceased did not possess valid driving licence and no premium whatsoever paid for P.A. coverage and hence, opposed the claim petition.



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3. Before the Tribunal, on the side of the petitioners, P.W.1 was examined and Exs.P1 to P10 were marked and on the side of the respondents, R.W.1 was examined and Ex.R1 was marked.

4. The Tribunal, after considering the oral and documentary evidence, held that since the application is filed under Section 163(A) of the Motor Vehicles Act, the negligent aspect is not required to be proved and the accident was not occurred due to the negligence of the deceased and no eyewitness was examined and awarded a sum of Rs.4,60,000/- as compensation. Challenging the same, the present appeal has been filed by the Insurance Company.

5. Be that as it may, it is the contention of the learned counsel for the appellant/Insurance Company that the deceased is a tortfeasor and further there is no premium whatsoever paid for Personal Accident coverage. Though it is the stand of the fifth respondent that the vehicle has been transferred to the deceased, still the registration certificate stands in the name of the fifth respondent. Therefore, in the absence of any premium paid for P.A. coverage, the Insurance Company is not liable to pay any amount.



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6. The learned counsel appearing for the respondents 1 to 4/claimants would submit that the registration number of the vehicle stands in the name of the fifth respondent and the insurance is also paid by the fifth respondent. Therefore, the Insurance Company is liable to pay the award amount.

7. In the light of the above submissions, now the point for consideration in this appeal is whether the Insurance Company is liable to pay the compensation, in the absence of any premium paid for P.A. coverage?

8. On perusal of the entire records, it is seen that the accident is not disputed. Though it is the contention of the Insurance Company that the deceased himself was the owner of the vehicle in which he travelled and died out of accident, the fact that only the deceased was the owner has not been established. But the fact remains that the insurance policy has been obtained by the deceased. It is an admitted fact that the deceased drove the motorcycle bearing Registration No.TN 65 P 6782 and met with an accident. Though it is stated that due to some rope tied in the road, the deceased met with an accident, no eyewitness was



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examined and P.W.1 also does not know about the manner of accident took place.

Though it is stated that only due to the rope tied in the road, the deceased died, to establish the above said fact, no one was examined and whether the rope tied in the middle of the road or not no one has been examined. The investigating officer was also not examined in this regard. However, the fact remains that the deceased himself fell down from the motorcycle and died. It is relevant to note that though it is the stand of the Insurance Company that the deceased is the owner, but the fact remains that the registration certificate still stand in the name of the fifth respondent. When the deceased himself is a totfeisor and the manner of the accident has not been established, it has to be held that the deceased is not the owner of the property and has stepped into the shoes of the owner.

9. Such being the case, at the most the claimants are entitled to P.A. coverage, if necessary premium is paid on the policy. On perusal of the policy/ Ex.R1, no such premium whatsoever paid. In the absence of any premium paid for P.A. coverage, the Insurance Company cannot be directed to pay the award amount.



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10. In the result, the Civil Miscellaneous Appeal is allowed. The award passed by the Motor Accident Claims Tribunal, Principal District Judge, Ramanathapuram in M.C.O.P.No.262 of 2019, dated 25.10.2021, is set aside and the amount deposited by the Insurance Company shall be refunded. No costs. Consequently, the connected Miscellaneous Petition is closed.

30.06.2023

akv

To

- 1.The Motor Accident Claims Tribunal,
Principal District Court,
Ramanathapuram.
- 2.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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