BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **07.06.2023**

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THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.M.A.(MD).No.462 of 2022
and
C.M.P.(MD).No.4085 of 2022

United India Insurance Company Limited,
Kumbakonam,
represented by its Divisional Manager.

... Appellant

Vs.

1.Pitchaiyammal
2.Chandran
3.Suganthi
4.Durga @ Durga Devi
5.Thavakumar
6.Anthoni Sahayaraj
7.Balathandayuthapani

... Respondents

PRAYER: The Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 08.09.2021 made in M.C.O.P.No.160 of 2014 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate Court, Thanjavur @ Kumbakonam.

For Appellant : Mr.A.S.Mathialagan
For RR1, 2, 5, 6 and 7 : No appearance

JUDGMENT

This appeal has been filed challenging the award passed by the Motor Accident Claims Tribunal, Chief Judicial Magistrate Court, Thanjavur @ Kumbakonam in M.C.O.P.No.160 of 2014, dated 08.09.2021, to the extent of Rs.1,00,000/- on the basis of P.A. coverage.

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

On 12.09.2013, at about 3.30 p.m., when the deceased was riding a motorcycle bearing Registration No.TN 68 J 8623 along with his friend in Thanjavur Ponnagar Vaari Cross Road from East to West direction, the third respondent drove the vehicle bearing Registration No.TN 49 L 5355 in a rash and negligent manner and dashed against the two wheeler. As a result, the deceased succumbed to injuries. Hence, the petitioners have filed the claim petition before the Tribunal seeking compensation.

3. Before the Tribunal, the second respondent/Insurance Company admitted that the insurance was in force on the date of accident and the F.I.R. was registered against the rider of the offending vehicle and he has no valid driving licence and insurance and disputed the insurance. The Tribunal, after

holding that since the offending vehicle did not have valid insurance and taking note of the fact that the deceased vehicle was insured and the P.A. coverage and awarded a sum of Rs.1,00,000/-.

4. The learned counsel appearing for the appellant/Insurance Company mainly challenged the amount of Rs.1,00,000/- awarded against the Insurance Company, on the ground that there is no driving licence possessed by the deceased at the time of accident.

5. Before the Tribunal, on the side of the petitioners, P.W.1 was examined and Ex.P1 to P4 were marked and on the side of the respondents, R.Ws.1 to 3 were examined and Exs.R1 to R6 were marked.

6. In the light of the above submissions, now the point for consideration in this appeal is whether the Tribunal is right in directing the appellant/Insurance Company to pay a sum of Rs.1,00,000/-, on the basis of PA coverage?

7. It is not in dispute that there is a valid insurance at the time of accident. The only contention is that to claim such personal accident coverage,

the person should have possessed valid driving licence and reliance has been placed on the evidence of R.W.2, who is the Assistant, Regional Transport Office, Thiruvarur.

8. On perusal of the above evidence indicate that the name of the deceased is not found in the ledger of the R.T.O. Office. However, the evidence of R.W.2, in the cross examination clearly indicate that the possibility of obtaining licence from other RTO Office and the same cannot be ruled out.

9. It is relevant to note that if there is no valid driving licence, they ought to have taken proper steps either for production of the documents or they ought to have given a notice to the first respondent or the legal heirs of the deceased to produce the licence. Only after issuing notice, in the event the documents are not coming, at least they can draw adverse interference against the party. For producing the documents, no such steps whatsoever taken. Therefore, merely on the basis of the evidence of R.W.2, the contention of the Insurance Company cannot be countenanced.

10. Admittedly, on the date of accident, the insurance is valid and it covers personal accident to the tune of Rs.1,00,000/-. It is not in dispute that

the insurance was very much valid for Rs.1,00,000/-. Therefore, the Insurance Company cannot deny the just compensation, that too payable as per the contract, on a technical ground. In respect of the other aspects, the amount awarded against the owner of the offending vehicle is not interfered with.

11. In the result, the Civil Miscellaneous Appeal is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

07.06.2023

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To

The Motor Accident Claims Tribunal,
Chief Judicial Magistrate Court,
Thanjavur @ Kumbakonam

N.SATHISH KUMAR,J.

akv

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