BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.04.2023

CORAM

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.664 of 2020

1. Raju Thevar
2. Pappa
3. Santhanamariammal
4. Priya Karuppasamy ....Appellants/Claimants

Vs.

1.Karthikeyan

2.The Branch Manager,
IFFCO- Tokyo General Insurance
Company Limited,
Door No.138/2, 2nd Floor, LMR Shopping Arcade,
MGM Theatre Opposite Side,
Namakkal District. ... Respondents/ Respondents

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, to set aside the Judgment and Decree passed by the Motor Vehicles Accident Claims Tribunal (Sub-Court), Sankarankovil, in M.C.O.P.No.58 of 2014 on 19.03.2020 and allow this Civil Miscellaneous Appeal.

For Appellants : Mr.M.Jothi Basu

For R1 : No Appearance

For R2 : Mr.V.Sakthivel

J U D G M E N T

The present appeal has been filed by the claimants challenging the award passed by the Motor Accidents Claims Tribunal, (Sub-Court), Sankarankovil, in M.C.O.P.No.58 of 2014.

2. It is the case of the claimants that the deceased Gurusamy was driving a two wheeler belonging to the first respondent in the claim petition. On 28.04.2014, at about 01.00 p.m, when the deceased was driving the two wheeler, he lost his balance and he fell down from the vehicle. The deceased had sustained injuries in the back side of the head and he succumbed to the injury in the Tuticorin Government Hospital. The claimants have further contended that the deceased was a cleaner aged about 19 years and he was earning a sum of Rs.9,000/- (Rupees Nine Thousand only). The claimants have prayed for a sum of Rs.30,00,000/- (Rupees Thirty Lakhs only) as compensation.

3. The owner of the vehicle had remained ex-parte and the Insurance Company had filed a counter contending that the deceased had died out of his own negligence and no offending vehicle was involved in the said accident. The Insurance Company has further contended that the deceased was not having valid or effective driving license at the time of the accident. Hence, they prayed for exonerating the Insurance Company from the liability.

4. The Tribunal, after considering the oral and documentary evidence, arrived at a finding that the accident has taken place only due to the rash and negligent driving on the part of the deceased Gurusamy. The Tribunal also found that the deceased was not having valid or effective driving license at the relevant point of time. Therefore, the claimants are not entitled to receive any compensation from the Insurance Company. Challenging the said award, the present appeal has been filed by the claimants.

5. The learned counsel appearing for the appellants had contended that the deceased Gurusamy, was having a Learner's License. It has been marked as Ex.R2. As per the said Learner's License, it was valid for the period between 20.08.2013 and 19.02.2014. The accident has taken place, on 29.04.2014. There are no oral or documentary evidence to establish that the deceased was not qualified to obtain the permanent driving license. Therefore, the deceased should be deemed to hold an effective valid driving license at the time of the accident. The Insurance Company is liable to satisfy the award.

6. Per contra, the learned counsel appearing for the second respondent had contended that the deceased is the borrower of the vehicle belonging to the first respondent. Therefore, he entered into the shoes of owner of the vehicle. Because of negligence on the part of the owner of the vehicle, he is not entitled to receive any compensation from the Insurance Company, in which, the vehicle is insured. If the deceased was having valid driving license, he would be entitled to receive the compensation under the Personal Accident Coverage. However, in the

present case, the deceased was having a Learner's License only for the period between August 2013 to February 2014. The accident has taken place in April 2014. Therefore, on the date when the accident had taken place, the deceased was not having any valid or effective driving license. In such an event, the question of invoking the Personal Accident Coverage also will not arise. Hence, he prayed for sustaining the award passed by the Tribunal.

7. I have carefully considered the submissions made by the learned counsel appearing on either side.

8. It is an admitted fact that the deceased had borrowed the vehicle belonging to the first respondent and he had driven the said two wheeler at the time of accident. It is also admitted fact that he had lost his balance, fallen down, sustained injuries and succumbed to the injuries. No offending vehicle is involved in the said accident. The legal heirs of the deceased have filed a claim petition seeking compensation from the owner of the two wheeler as well as the Insurance Company of the two

wheeler, in which, the deceased had travelled. These facts are not in dispute.

9. In view of the above said fact that the deceased had borrowed the vehicle from the first respondent who is the owner of the vehicle, he had entered into the shoes of the owner of the vehicle. Therefore, it is clear that the owner cannot seek any compensation from his own Insurance Company either under Section 166 or under Section 163-A of the Motor Vehicles Act.

10. The owner/borrower of the vehicle will be entitled to seek compensation from his own Insurance Company only under the Personal Accident Coverage. The Insurance Company is liable to pay the amount under the Personal Accident Coverage only if the injured/deceased was having an effective or valid driving license at the time of accident. In the present case, admittedly, the deceased was having only a Learner's License which had expired two months prior to the dare of the accident. Therefore, the deceased was not having any effective or valid driving

license at the time of accident. The Tribunal has properly appreciated the said facts and had dismissed the claim petition.

11. In view of the above said deliberations, this Court does not find any merit in the present appeal. Accordingly, this Civil Miscellaneous Appeal is dismissed. No costs.

10.04.2023

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

1.The Motor Accident Claims Tribunal/
Sub - Court, Sankarankovil.

2. The Branch Manager,
IFFCO- Tokyo General Insurance
Company Limited,
Door No.138/2, 2nd Floor, LMR Shopping Arcade,
MGM Theatre Opposite Side, Namakkal District.

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

R.VIJAYAKUMAR,J.

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Judgement made in
C.M.A(MD)No.664 of 2020

10.04.2023