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C.M.A.(MD).No.128 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 19.10.2023

Delivered on: 09.11.2023

CORAM:

**THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN
AND
THE HONOURABLE MR.JUSTICE P.B.BALAJI**

C.M.A.(MD).No.128 of 2018

and

C.M.P.(MD)No.1809 of 2018

The Divisional Manager,

United India Insurance Company Limited,

Tenkasi.

... Appellant / Respondent No.2

Vs.

1.Ramalakshmi

2.Radha

3.Minor.Bhavani Vaitheswari

4.Minor.Suresh

(Minor Respondents 3&4 are represented by their
next friend and mother, R2-Radha)

... Respondents 1 to 4 / Petitioners

5.Venkatamurugesan

... 5th Respondent/1st Respondent

Prayer:- Appeal filed under Section 173 of the Motor Vehicles Act, against the judgment and decree in M.C.O.P.No.41 of 2017, dated 07.09.2017, on the file of the Motor Accident Claims Tribunal, Additional District Court, Tenkasi.



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For Appellant : Mr.J.S.Murali
For Respondents : Mr.D.Srinivasaragavan for R1 to R4
: No appearance for R5

JUDGMENT

(Judgment of the Court was made by P.B.BALAJI,J.)

The Insurance Company, aggrieved by the award of Rs.21,54,000/- in a Motor Accident that occurred on 16.06.2013, is the appellant before us.

2. The respondents 1 to 4 as claimants being the wife and minor children of the deceased - one Ramasamy filed M.C.O.P.No.41 of 2017, seeking compensation to the tune of Rs.50,00,000/- on the ground that the deceased was aged about 35 years, working as Clerk in a private Company and earning about Rs.3,333/- per month and that on the fateful day, the deceased was riding a motorcycle, which capsized at a speed braker, resulting in throwing the deceased out of his bike and resulting in instantaneous death.



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3. The said claim was resisted by the appellant herein on the ground that the first respondent - owner of the vehicle was none other than the brother of the deceased, and there were no third party vehicle involved in the accident and therefore, the claim itself was not maintainable and at best, the personal accident cover alone be awarded to the claimants.

4. Before the Tribunal, the wife of the deceased - Radha examined herself as P.W.1 and one Murugesan was examined as P.W.2 and 12 documents were marked as Ex.P1 to Ex.P12 on the side of the claimants. On the side of the respondents, one Madasamy was examined as R.W.1 and 5 documents were marked as Ex.R1 to Ex.R5.

5. The Tribunal, finding that there was no rash driving on the part of the deceased, which resulted in the fatal accident, held that the claimants, as legal representatives can maintain the claim against their own insurer and held that the accident occurred only due to the poor road condition and not due to any negligence of the deceased and proceeded to award a compensation of Rs.21,54,00/-.



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6. Aggrieved by the said award of the Tribunal, the appellant has preferred the present Civil Miscellaneous Appeal, raising the following grounds:

(i) The First Information Report was registered against the deceased;

(ii) The first respondent before the Tribunal was the owner of the vehicle, which had been borrowed by the deceased, his younger brother and therefore, the Tribunal ought to have seen that the deceased stepped into the shoes of the owner of the vehicle and could not entitle himself to compensation from his own Insurance Company; and

(iii) The Tribunal has not considered Ex.R1 to Ex.R4 in a proper prospective.

(iv) The Tribunal erred in converting claim under Section 163-A of the Motor Vehicles Act into one under Section 166 of the Motor Vehicles Act and erroneously awarded compensation.

7. We have heard Mr.J.S.Murali, learned counsel for the appellant and Mr.D.Srinivasaragavan, learned counsel for the respondents



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1 to 4/ claimants. We have also perused the records and the award passed by the Tribunal.

8. Admittedly, the owner of the vehicle, namely, the fifth respondent herein was the elder brother of the deceased. No third party vehicle was involved in the accident and therefore, the claimants thought it fit to file M.C.O.P against the Insurance Company of the bike owned by the first respondent. The Tribunal has taken a sympathetic view and held that the claim can be maintained against the claimants' own insurance company. As rightly contended by the learned counsel for the appellant, under Section 163-A of M.V.Act, even when the deceased was driving the motorcycle that was borrowed from the owner - the said deceased person can only step into the shoes of the owner of the vehicle and therefore, Section 163-A M.V.Act does not stand attracted at all.

9. In the instant case, admittedly, the deceased was the owner's younger brother and no third party offending vehicle was involved in the accident. Therefore, the claim petition against the insurer of the fifth respondent's vehicle is not maintainable under the M.V.Act and at best, the personal accident cover that was payable to the owner could have been



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awarded by the Tribunal, to the deceased. Admittedly, the said amount is Rs.1,00,000/- as per the contract of insurance.

10. The learned counsel for the appellant would place reliance on the judgment of the Hon'ble Supreme Court in the case of ***Ramkhiladi and another V. United India Insurance Co.Ltd.*** reported in **2020-1-TNMAC-1 (SC)**, where the Hon'ble Supreme Court dealt with a similar issue and discussed the various precedents on this point and ultimately, came to the conclusion that the liability under Section 163-A of M.V.Act, is on the owner of the vehicle as a person cannot be both, a claimant and at the same time, a recipient and the heirs of the owner cannot maintain a claim in terms of Section 166 of the M.V.Act and be awarded compensation. Taking recourse to the contract of insurance, the Apex Court restricted the liability to Rs.1,00,000/-.

11. The facts of the said case are identical to the facts on hand. We do not see any distinguishing factor to allow the award in excess of Rs.1,00,000/-. The Tribunal clearly fell in error in holding that the petition under Section 163-A of M.V.Act was maintainable and proceeded to award



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compensation based on other factors that governed Motor Accident cases.

Such a course adopted by the Tribunal is clearly illegality and perverse.

12. In the facts and circumstances, the deceased can only be treated as a tort feaser and the claim by his legal representatives ought not to have been entertained by the Tribunal. In view of the policy of Contract of Insurance, a sum of Rs.1,00,000/- is payable towards personal accident cover and the appellant is liable to pay only the said sum.

13. In fine, the Civil Miscellaneous Appeal stands partly allowed and the compensation awarded by the Tribunal is reduced from Rs.21,54,000/- to Rs.1,00,000/. The claimants shall be entitled to Rs.25,000/- each with proportionate interest and costs.

14. The appellant / Insurance Company is directed to deposit the modified award amount of Rs.1,00,000/ along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit, and costs awarded by the Tribunal, less the amount, if any already deposited,



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within a period of six (6) weeks from the date of receipt of a copy of this judgment. Excess amount, if any, shall be refunded to the appellant / Insurance Company.

15. On such deposit being made, the respondents 1 & 2 herein are permitted to withdraw their award amount along with interest and costs as apportioned by this Court, less the amount if any, already withdrawn by them, after filing appropriate applications before the Tribunal. In respect of the share of minors - respondents 3 & 4 herein, the Tribunal is directed to deposit their share amount in any one of the Nationalised Banks till they attain the age of majority. Till then, the second respondent herein - mother of the minors shall be permitted to withdraw the interest accrued thereon, once in three months in order to maintain the minors. There shall be no order as to costs in the present appeal. Consequently, connected Miscellaneous Petition is closed.

(T.K.R.J.) & (P.B.B.J)
09.11.2023

Internet : Yes
Index: Yes/No
Neutral Citation: Yes/No
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To

1.The Motor Accident Claims Tribunal,
Additional District Court,
Tenkasi.

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



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RMT.TEEKAA RAMAN, J.,
and
P.B.BALAJI,J

Ls

judgment in
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