BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **17.03.2023**

CORAM

**THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR**

**C.M.A(MD)No.1383 of 2016**
**and**
**C.M.P(MD)No.11535 of 2016**

The Branch Manager,
TATA AIG General Insurance Co.Ltd.,
P.O.Box No.9407, Chakala,
MIDC-Post Office,
Mumbai-400 093. ... Appellant/Respondent

Vs.

1.Selvi

2.Mani ... Respondents/Petitioners

**PRAYER:** Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act 1988, to set aside the fair and decreetal order dated 26.08.2015 made in M.C.O.P.No.5 of 2013 on the file of Motor Accident Claims Tribunal, (Additional District & Sessions Court) Theni at Periyakulam.

For Appellant : Mr.J.S.Murali

For Respondents : Mr.S.Muniyandi

**JUDGEMENT**

The present appeal has been filed by the insurance company challenging an award passed by the Motor Accident Claims Tribunal, Periyakulam in M.C.O.P.No.5 of 2013.

2. The parents of the deceased have filed a claim petition contending that the deceased along with another person had travelled in a two wheeler and while they were approaching near a railway gate, they were thrown away and they had sustained grievous injurious. The deceased had passed away on 30.08.2012 and an F.I.R was registered in Crime No.338 of 2012 on the file of Andipatti Police Station. According to the claimants, the deceased was a Mason and he was earning a sum of Rs.15,000/- per month. The claimants prayed for a claim amount of Rs.5,00,000/-. The claim petition was lodged as against the insurance company of the motor bike, in which the deceased was travelling.

3. The insurance company had filed a counter contending that the accident has taken place only due to the rash and negligent driving of the deceased person and even as per the admitted case of the claimants, there was no involvement of any other vehicle. Therefore, the insurance

company had contended that the deceased being a tortfeasor, they are not liable to pay any compensation either under Section 163-A or under Section 166 of the Motor Vehicles Act.

4. The tribunal after considering the oral and documentary evidence arrived at a finding that the accident had happened only due to the negligence of the deceased person. However, it fixed the liability upon the insurance company on the ground that the vehicle was insured with the respondent insurance company. Thereafter, the tribunal has proceeded to fix the monthly income at Rs.4,500/- and the total compensation of Rs.4,63,000/- was arrived at by the tribunal. The said award is under challenge in the present appeal.

5. The learned counsel appearing for the appellant insurance company had pointed out that the deceased had driven his motor bike and without involvement of any other vehicle, the accident has taken place and the deceased had passed away. The petition under Section 166 of the Motor Vehicles Act would not be maintainable in view of the fact that there was no involvement of any other vehicle. Even assuming that a petition under Section 163-A of Motor Vehicles Act is maintainable, in view of the fact, that the deceased was the owner cum driver of the motor

bike, he is not eligible to receive compensation even under Section 163-A of Motor Vehicles Act.

6. The learned counsel appearing for the appellant had also relied upon a judgment of the Hon'ble Supreme Court reported in ***2009 (13) SCC 710 (Ningamma & Another Vs. United India Insurance Company Limited)*** to contend that the owner of the vehicle, who is a tortfeasor, will not be eligible to seek compensation under Section 163-A of Motor Vehicles Act.

7. In view of the above said facts, this Court is of the considered opinion that the award of the tribunal either under Section 163-A or under Section 166 of Motor Vehicles Act is not legally sustainable and the same is liable to be set aside. However, a perusal of the policy which has been marked as Exhibit R.3 will clearly disclose that a premium under the head of compulsory personal accident cover for owner cum driver has been paid at the rate of Rs.50/-. As per the said policy, the owner cum driver is entitled to receive a sum of Rs.1,00,000/- (Rupees One Lakh only) towards personal accident cover.

8. In view of the above said facts, the claimants would be entitled to only a sum of Rs.1,00,000/- (Rupees One Lakh only) with 7.5% of interest from 02.01.2013 till the date of realization. The award amount is modified to the above said extent and the appeal stands partly allowed. Any excess amount paid by the insurance company shall be refunded to them along with accrued interest.

9. With the above said observations, this Civil Miscellaneous Appeal stands partly allowed. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

**17.03.2023**

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

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To

1.The Motor Accident Claims Tribunal
(Additional District & Sessions Court),
Periyakulam,
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.1383 of 2016

17.03.2023