BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **20.06.2023**

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THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.587 of 2015
and
M.P(MD)No.2 of 2015 & C.M.P(MD)No.4414 of 2021

The Branch Manager,
United India Insurance Co.Ltd.,
Door No.23E, EVR Road, Pudur,
Trichy Town, Trichy Taluk,
Trichy District. ... Appellant/2nd Respondent

Vs.

1.Veeralakshmi ... Respondent/Petitioner

2.Prabhakar

3.V.Govindaraj

4.Mohanambal ... Respondents/Respondents 1,3&4

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, against the judgment and decree, dated 16.07.2012 passed in M.C.O.P.No.24 of 2006 on the file of the Motor Accident Claims Tribunal (Sub Court), Periyakulam and set aside the same.

For Appellant : Mr.I.Robert Chandrakumar
for Mr.G.Prabhu Rajadurai

For R1 : Mr.R.Shankar Ganesh

For R2-R4 : No Appearance

JUDGMENT

The present appeal has been filed by the insurance company challenging the award passed by the Motor Accident Claims Tribunal, Periyakulam in M.C.O.P.No.24 of 2006 primarily on the ground of liability.

2. The claimants have contended that the deceased had borrowed a two wheeler from the 1st respondent and while he was driving the vehicle on 06.07.2005, due to mechanical defect, he lost control and fell down, sustained head injury and passed away. The claimants have sought for a compensation of Rs.5,00,000/-.

3. The insurance company has filed a counter contending that the deceased being a borrower of the vehicle from the owner and no other offending vehicle was involved in the said accident, the claim petition under Section 163-A is not maintainable.

4. The tribunal after considering the oral and documentary evidence, arrived at a finding that the claimants are entitled to receive a compensation under Section 163-A of the Motor Vehicles Act. The tribunal proceeded to fix the quantum of compensation at Rs.5,00,000/-. This award is under challenge in the appeal by the insurance company.

5. According to the learned counsel appearing for the insurance company, the deceased himself was a tortfeasor. He had borrowed the vehicle from the owner and therefore, he should be treated as the owner of the vehicle at the time of the accident. As per the judgment of the Hon'ble Supreme Court in ***2020 (2) SCC 550 (Ramkhiladi & Another Vs. United India Insurance Company & Another)*** *a* borrower of the vehicle is not entitled to file an application under Section 163-A of the Motor Vehicles Act. Hence, he prayed for allowing the appeal and for setting aside the award passed by the tribunal.

6. Per contra, the learned counsel appearing for the respondent had contended that the borrower of the vehicle should be treated as a third party to the contract of insurance and the award of the tribunal may be sustained.

7. I have carefully considered the submissions made on either side.

8. A perusal of the claim petition indicates that the deceased, namely Venkatesan had borrowed a two wheeler from the 1st respondent and while he was riding the said vehicle, due to mechanical defect, he lost control and fell down, sustained injuries and later, passed away. Therefore, it is clear that no other offending vehicle was involved in the said accident. The Hon'ble Supreme Court in a judgment reported in ***2020 (2) SCC 550 (Ramkhiladi & Another Vs. United India Insurance Company & Another)*** has categorically held that a claim petition under Section 163-A is not maintainable at the instance of a borrower or the permissive users of the vehicle. Therefore, the tribunal ought not to have proceeded with the claim petition on merits. However, a perusal of the insurance policy indicates that it has got a personal accident coverage of Rs.1,00,000/-. The deceased having stepped into the shoes of the owner, he is entitled to receive a sum of Rs.1,00,000/-. It is submitted across the bar that a sum of Rs.1,65,000/- has been deposited by the insurance company and the said amount has also been withdrawn by the claimants. Though the claimant and the 4th respondent are entitled to receive only a sum of Rs.1,00,000/-, they have already withdrawn a sum of

Rs.1,65,000/-.

9. Considering the above said facts, the tribunal ought no to have mulcted the liability upon the insurance company. The appeal stands allowed setting aside the award passed by the tribunal. However, the amount that was withdrawn by the claimants shall not be recovered by the insurance company. The balance amount shall be refunded to the insurance company along with accrued interest.

10. With the above said observations, this Civil Miscellaneous Appeal stands allowed. No costs. Consequently, connected Miscellaneous Petitions are closed.

20.06.2023

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

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To

1.The Motor Accident Claims Tribunal
(Sub Court),
Periyakulam.

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

Madurai.

R.VIJAYAKUMAR,J.

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Judgment made in
C.M.A(MD)No.587 of 2015

20.06.2023