BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.04.2023

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.1050 of 2017

The Divisional Manager,
United India Insurance Company Ltd.,
Divisional Office III,
Seethalakshmi Complex,
Tirunagar,
Madurai – 625 006. ..... Appellant/ 2nd Respondent

-vs-

1. Amutha
2. Minor Dharshini
3. Paraman
4. Packiam .... Respondents 1 to 4/Petitioners
5. G.Mahalingam .... Respondent No.5/ 1st Respondent

(The minor 2nd respondent is represented by its mother and natural guardian first respondent. Hence, no notice is necessary to 2nd respondent).

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act 1988, against the judgment and decree dated 10.08.2012, passed in M.C.O.P.No.16 of 2011, on the file of the Motor Accidents Claims Tribunal, (Sub Court), Periyakulam, and set aside the same.

For Appellant : Mr.G.Prabhu Rajadurai

For Respondents : Mr.K.Kumaravel for R1 to R4
: M/s. S.Muthu Meena – for R5

JUDGMENT

The present appeal has been filed by the Insurance Company challenging the award passed by the Motor Accidents Claims Tribunal/ (Sub Court) Periyakulam, primarily on the ground of liability.

2. According to the claimants, the deceased had borrowed the vehicle belonging to the first respondent and while he was driving the vehicle at about 07.00 a.m., on 09.08.2009, a third party had crossed the road by riding a Motor Cycle. In view of the said fact, the deceased fell down from the vehicle on the road and sustained head injury and had passed away on 12.08.2009. Hence, the claimants sought for a sum of Rs.5,00,000/- (Rupees Five Lakhs only) as compensation.

3. The owner of the two wheeler had remained ex-parte. The Insurance

Company had filed a counter affidavit contending that the accident has happened only due to the rash and negligent driving of the deceased and they are not liable to pay any compensation. They have further contended that the applications have been filed under Section 163-A of the Motor Vehicles Act. The owner/borrower of the vehicle would not be entitled to maintain the claim petition.

4. The Tribunal, after considering the oral and documentary evidence, arrived at a finding that the accident has happened only because of the fact that one Ganesan had suddenly crossed the road and therefore there was no negligence on the part of the deceased person. The Tribunal further found that there is no violation of policy condition and proceeded to fix the liability upon the owner and the Insurance Company. The Tribunal fixed the notional monthly income as Rs.4,500/- (Rupees Four Thousand and Five Hundred only) and finally arrived at compensation a sum of Rs.5,00,000/- (Rupees Five Lakhs only). This award is under challenge in the present appeal.

5. According to the learned counsel appearing for the appellant even as per the averments in the claim petition, the deceased had borrowed the

vehicle from the first respondent. No other vehicle was involved in the accident. Therefore, the entire accident has taken place only due to the negligence on the part of the deceased. When any vehicle has involved in the said accident, the owner or borrower of the vehicle cannot invoke Section 163-A of the Motor Vehicles Act to claim compensation.

6. Per contra, the learned counsel appearing for the respondents had contended that the policy is a package policy and therefore, any injury or death of the owner or borrower of the vehicle would also been entitled to receive compensation from the Insurance Company. He further contended that the said fact has been properly appreciated by the Tribunal and the award has been passed. Hence, he prayed for sustaining the award passed by the Tribunal.

7. I have carefully considered the submissions made by the learned counsel on either side and perused the records.

8. It is an admitted the case of the claimants that the deceased person had borrowed the vehicle from the first respondent and he had driven the

vehicle and met with an accident. There is no involvement of any other offending vehicle. Therefore, it is clear that the claimants are legal heirs of the borrower of the vehicle and the claim petition has been filed under Section 163-A of the Motor Vehicle Act. In the judgment of the Hon'ble Supreme Court reported in ***2020 (2) SCC 550 (Ramkhildai and another vs. United India Insurance Company and another)*** has categorically held that the own-use of motor vehicle by owner/borrower/ permissive user does not entitle them to maintain a petition under Section 163-A of the Act against insurer of their own/borrowed vehicle. In view of the said legal position, this Court is of the opinion that the claim petition filed under Section 163-A of the Motor Vehicles Act, is not maintainable.

9. A perusal of the package policy of the two wheeler which has been marked as Ex.R4 indicates that premium has been paid for compulsory Personal Accident Coverage to the owner/driver. The deceased borrowed the vehicle from the owner and he is entitled to receive compensation under the Personal Accident Policy. The driving license of the deceased has been marked as Ex.P.6. Therefore, there cannot be legally impediment for this Court to award a sum of Rs.1,00,000/- (Rupees One Lakh only) under the

Personal Accident Coverage.

10. In view of the above said deliberations, the award of the Tribunal is set aside and the Insurance Company is directed to pay a sum of Rs.1,00,000/- (Rupees One Lakh only) to the claimants with interest at the rate of 7.5% per annum from the date of claim petition. The 1st claimant shall be entitled to Rs.40,000/- (Rupees Forty Thousand only). The 2nd and 3rd claimants are entitled to Rs.25,000/- (Rupees Twenty Five Thousand only) each. The 4th claimant is entitled to Rs.10,000/- (Rupees Ten Thousand only). In respect of the minor claimant/2nd claimant, the amount shall be deposited in a Nationalised Bank till she attains majority and the guardian of the minor claimant is permitted to withdraw the interest once in three months.

11. Accordingly, this Civil Miscellaneous Appeal is allowed to the extent as stated above. There shall be no order as to costs.

25.04.2023

NCC : Yes/No
Index : Yes / No

Internet : Yes / No
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To
1. The Motor Accidents Claims Tribunal,
   (Sub Court) Periyakulam

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

R.VIJAYAKUMAR,J.

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