BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.04.2023

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.1092 of 2017
and
C.M.P(MD) No.11145 of 2017

The Manager,
IFFCO- TOKIO General Insurance Company,
First Floor, Preetham Plaza,
88, Chandrakanda Nagar,
Ponmeri Byepass Road,
Madurai Town,
Madurai District. .....Appellant/2nd Respondent

-vs-

1. R.Shanthi

2. Minor R.Saravanakumar .... Respondent 1 and 2/ Petitioners

3. V.Gandhinathan ... Respondent No.3/Respondent No.1
4. Suresh .... Respondent No.4/ Respondent No.3

(Minor 2nd Respondent represented through his next friend and guardian of the 1st Respondent)

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, 1988, against the award and decree, dated 11.11.2016, passed in M.C.O.P.No.113 of 2010 on the file of the Motor Accidents Claims Tribunal/Subordinate Judge, Devakottai, in so far as liability is concerned.

For Appellant	:	Mr.V.Sakthivel
For Respondents	:	Mr.T.Selvakumaran - for R1 and R2
	:	No appearance - for R3 and R4

J U D G M E N T

The present Civil Miscellaneous Appeal has been filed by the Insurance Company challenging the award passed by the Motor

Accidents Claims Tribunal/Subordinate Judge, Devakot[illegible] in M.C.O.P.No.113 of 2010.

2. According to the claimants, the deceased, who was a Mason and receiving a monthly income of Rs.6,000/- (Rupees Six Thousand only), was driving a two wheeler on 23.02.2010, belonging to the first respondent in the claim petition. While he was driving the said two wheeler, a TATA Indica Car belonging to the third respondent was driven by its driver in a rash and negligent manner and dashed against the rear side of the two wheeler driven by the deceased person. In the said accident, he sustained grievous injuries and later succumbed to the said injuries. The wife and the minor son of the deceased had filed the claim petition seeking a compensation of Rs.9,00,000/- (Rupees Nine Lakhs only).

3. The owner of the two wheeler had remained ex-parte and the third respondent herein viz., owner of the two wheeler had filed a counter contending that the deceased was driving the vehicle without driving license and he was alone responsible for the accident.

4. The appellant/Insurance Company had filed a counter contending that when the negligence is attributed to the third respondent Car, the second respondent cannot be called upon to pay the compensation amount. Further, in paragraph No.9 of the counter, they have pointed out that the deceased was not having driving licence at the relevant point of time.

5. The Tribunal, after considering the oral and documentary evidence, arrived at a finding that the claim petition has been filed under Section 163-A of the Motor Vehicles Act and therefore, it is not mandatory to consider the fact on whom the negligence lies. Thereafter, the Tribunal had arrived at a finding that the third respondent, the appellant/Insurance Company is liable to pay the compensation.

6. Thereafter, the Tribunal had arrived at a finding that the deceased was having notional annual income at Rs.40,000/- (Rupees Forty Thousand only), total compensation for a sum of Rs.4,06,990/- (Rupees Four Lakhs Six Thousand Nine Hundred and Ninety only) was awarded with 7.5% interest per annum. This award is under challenge in the present appeal.

7. According to the learned counsel appearing for the appellant/ Insurance Company, admittedly, the deceased had borrowed the two wheeler belonging to the third respondent and he had driven the said vehicle. Even in the claim petition it has been submitted that the TATA Indica Car belonging to the fourth respondent was driven in a rash and negligent manner and dashed against the rear side of the Motor Bike. Therefore, it is clear that the entire negligence is on the part of the TATA Indica Car driver, which has not been insured with any Insurance Company, therefore, there is no negligence on the part of the third respondent and hence, the

question of mulcting the liability upon the third respondent ... the appellant/Insurance Company does not arise.

8. The learned counsel appearing for the appellant further pointed out that at the time of accident the deceased was not having effective driving license the same has also been pointed out in the counter in paragraph No.9 filed by the third respondent. Therefore, the Insurance Company is not liable to pay any compensation even under the Personal Accident Coverage.

9. He further contended that the claim petition was filed only under Section 166 of the Motor Vehicles Act, and only during deposition of P.W.1, he had stated that the claim petition has been filed under Section 163-A of the Act. The Tribunal has relied upon the said deposition and proceeded to fix the liability on the Insurance Company. Hence, according to the learned counsel appearing for the appellant, the petition was filed only under Section 166 of the Act, which cannot be converted into Section 163-A of the Act, at the time of deposition of the parties. He further contended that even assuming that Section 163-A is applicable, when the claim petition is filed under Section 163-A of the Act, the deceased being a borrower of the vehicle from the owner, he had stepped into the shoes of the owner and he cannot invoke Section 163-A of the Act. Therefore, viewed from any angle, the award of the Tribunal is not sustainable. Hence, he prayed for allowing the appeal.

10. Per contra, the learned counsel appearing for the respondents 1 and 2/ claimants has contended that the deceased had driven the Motor Vehicle belonging to the first respondent herein and the Insurance Company has collected premium for covering the third parties. It is seen that the deceased is a third party to the contract of the Insurance and hence, the Insurance Company is liable to pay the compensation. The learned counsel for the claimants had relied upon the judgment of the Division Bench of our High Court reported in ***2017 ACJ - 530 (New India Assurance Co.Ltd., Vs. P.Arunachalam and others)*** wherein the Division Bench was pleased to hold that when the third party premium is collected in the insurance policy the Insurance Company is liable to pay compensation to the claimants even in case of pillion rider on the Motor Cycle. Hence, he prayed the award of the Tribunal may be confirmed.

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

12. There is no dispute that the deceased had borrowed the two wheeler belonging to the third respondent and he had driven the said two wheeler. Even as per the claim petition, the TATA Indica Car belonging to the third respondent was driven in a rash and negligent manner and dashed against the said two wheeler in which, the deceased had sustained grievous injuries and later succumbed to the said injuries.

13. The narration of the above said facts would clearly indicate that the deceased had borrowed the vehicle from the first respondent and therefore, he had entered into the shoes of the owner of the vehicle. That apart, in the claim petition, the entire negligence has been cast upon the fourth respondent, who is the owner of the TATA Indica Car. When the entire negligence is pleaded as against the TATa Indica Car, it is not known how the claim petition is maintainable as against the owner of the two wheeler and the Insurance Company.

14. A perusal of the claim petition indicates that it is filed under Section 166 of the Motor Vehicles Act. However, the Tribunal has relied upon the deposition of P.W.1 to arrive at a finding that the claim petition has been filed under Section 163-A of the Motor Vehicles Act. There are no records to establish that the claim petition was amended at any point of time. Even assuming that the claim petition was filed under Section 163-A of the Act, the fact remains that the deceased had entered into the shoes of the owner of the vehicle, he would not be entitled to maintain the claim petition as against the Insurance Company. The judgment of the Hon'ble Supreme Court reported in ***2009 13 SCC 710 (Ningamma and another Vs. United India Insurance Company Limited)*** has held that where the deceased had stepped into the shoes of the owner of the vehicle he cannot maintain an application under Section 163-A.

15. In view of the Judgment of the Honourable Supreme Court, this Court is not in a position to rely upon the judgment of the Division Bench of our High Court reported in ***2017 ACJ – 530 (New India Assurance Co.Ltd., V. P.Arunachalam and others)*** which has been delivered without considering the judgments of the Honourable Supreme Court.

16. The learned counsel appearing for the claimants had further contended that the deceased, if he is treated as the owner of the vehicle, then the Insurance Company is liable to pay compensation under the Personal Accident Coverage. However, the learned counsel for the appellant/Insurance Company has pointed out that it is the specific case of the Company that the deceased was not having any driving license at the relevant point of time. Though the said issue has been raised in the counter of the first and second respondents herein, the claimants have not chosen to file the driving license of the deceased person. Therefore, this Court is constrained to draw an adverse interference as against the claimants to conclude that the deceased was not having any driving license at the relevant point of time.

17. In view of the fact that the deceased was not having any driving license at the relevant point of time, the question of

invoking Personal Accident Coverage of the Policy and pa of compensation under the said head also will not arise. Viewed from any angle, the appellant/Insurance Company cannot be mulcted with any liable to pay the compensation either under Section 166 of the Act or under Section 163-A of the Act or under Personal Accident Coverage of the Policy. Therefore, the award of the Tribunal is not legally sustainable and the award is set aside. This Civil Miscellaneous Appeal is allowed. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar()

// True Copy //

/07/2023

Sub Assistant Registrar(CS)

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To

1. The Subordinate Judge,
   Motor Accidents Claims Tribunal
   Devakottai.

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

+1 CC to M/s.V.SAKTHIVEL, Advocate (SR-19792[F] dated 06/04/2023)

+1 CC to M/s.T.SELVAKUMARAN, Advocate (SR-19850[F] dated 06/04/2023)

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