BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **27.03.2023**

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THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.195 of 2017
and
C.M.P(MD)No.2378 of 2017

The Branch Manager,
The Oriental Insurance Company Limited,
No.3-4 Siddhaveerappa Chetty Street,
Dharmapuri Town-636 701. ... Appellant/2nd Respondent

Vs.

1.Tamilarasi

2.Ashok Kumar

3.Lakshmanan @ Vignesh ... Respondents/Petitioners 1-3

4.Nagaraj ... Respondent/1st Respondent

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicle Act, to set aside the award of Rs.4,00,000/- (Rupees Four Lakhs only) passed in M.C.O.P.No.290 of 2014, dated 06.11.2015 on the file of the Motor Accidents Claims Tribunal cum II Additional District Judge, Tirunelveli.

For Appellant : Mr.C.Karthik

For R1-R3 : Mr.K.P.Ramesh

JUDGEMENT

The present appeal has been filed by the insurance company challenging the award of the Motor Accident Claims Tribunal, Tirunelveli in M.C.O.P.No.290 of 2014 primarily on the ground of liability.

2. The claim petition has been filed under Section 163-A of the Motor Vehicles Act alleging that one Palani Murugan who was riding a two wheeler belonging to the 1st respondent and insured with the 2nd respondent had dashed against the caution pipe in a bridge and met with an accident. In the said accident, the deceased had died on the spot. The claimants who are the parents and brother of the deceased have prayed for a sum of Rs.4,36,000/- towards compensation.

3. The owner of the vehicle had remained ex parte and the 2nd respondent insurance company had filed a counter contending that the accident has happened only due to the rash and negligent driving of the deceased and no other offending vehicle was involved in the said accident. They have further contended that the deceased was not having any valid and effective driving license at the time of the accident. The insurance company has also questioned the quantum of compensation as

prayed for.

4. The tribunal after considering the oral and documentary evidence has arrived at a finding that the deceased alone was negligent in driving the vehicle and he is the cause for the accident. The tribunal has also arrived at a finding that the deceased was not having effective driving license at the time of the accident. Thereafter, the tribunal has proceeded to fix the quantum of award at Rs.4,00,000/- and directed the insurance company to pay the award and granted liberty to recover the same from the owner of the vehicle. Challenging the said award, the present appeal has been filed.

5. According to the appellant/insurance company, the deceased had borrowed the two wheeler from the 1st respondent and he had met with an accident due to his rash and negligent driving. No other offending vehicle was involved in the said accident. Therefore, the deceased should be considered to be a borrower of the vehicle from the 1st respondent and he cannot invoke Section 163-A of Motor Vehicles Act for claiming compensation. The learned counsel appearing for the appellant relied upon a judgment of the Hon'ble Supreme Court reported in ***2009 (2) TN MAC 169 (Ningamma & Another Vs. United India***

Insurance Co. Ltd.,) to impress upon the Court that the borrower of the vehicle enters into the shoes of the owner of the vehicle and therefore, under Section 163-A of Motor Vehicles Act, the owner is not entitled to seek for a compensation from his own insurance company.

6. The learned counsel for the appellant had further contended that a sum of Rs.50 has been collected towards personal accident in the above said policy. However, since the deceased was not having any driving license at the relevant point of time, he is not entitled for any amount under the personal accident coverage. The learned counsel for the appellant had relied upon a judgment of our High Court reported in ***2020 (1) TN MAC 646 (Divisional Manager, Oriental Insurance Co. Ltd., Vellore Vs. R.Damodharan & Another)***. In Paragraph No.10, the Single Judge of this Court has held that unless the owner cum driver owes an effective driving license in accordance with the provisions of law, he cannot claim any compensation under the personal accident coverage. Therefore, according to the learned counsel appearing for the appellant/insurance company, the company is not liable to pay any compensation. When they are not at all liable to pay compensation, the question of invoking the principle of pay and recovery would not arise.

7. Per contra, the learned counsel appearing for the respondents had contended that the deceased was an employee of the 1st respondent and only as an employee, he had driven the said vehicle and he had met with an accident. Therefore, being an employee, he would be entitled to invoke Section 163-A of Motor Vehicles Act. He further contended that the award amount cannot be considered to be excessive and therefore, the award of pay and recovery may not be disturbed. He further contended that the insurance company has been granted liberty to recover the award amount due to non-possession of the driving license. When pay and recovery has been awarded for violation of policy conditions, the said award may not be interfered with.

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

9. The deceased was driving a two wheeler and he met with an accident by dashing against the caution pipe located near a bridge. Therefore, it is clear that there was no involvement of any other offending vehicle. Hence, there cannot be any dispute that the accident has happened only due to the rash and negligent driving of the rider of the two wheeler who had succumbed to the injuries.

10. Though it is contended by the learned counsel appearing for the respondents that the deceased was an employee of the 1st respondent herein, there are no pleadings or evidence to the said effect. In the claim petition, it has been simply pleaded that the deceased had driven the vehicle belonging to the 1st respondent. Therefore, this Court is not in a position to agree with the said submissions. Hence, it is clear that the deceased had borrowed the vehicle of the 1st respondent and he had driven the vehicle and met with an accident. When the deceased is a borrower of the vehicle, he enters into the shoes of the owner of the vehicle. The Hon’ble Supreme Court in a judgment reported in ***2009 (2) TN MAC 169 (Ningamma & Another Vs. United India Insurance Co. Ltd.,)*** has categorically found that the borrower of the vehicle gets himself substituted in the place of owner of the vehicle and he cannot invoke Section 163-A of Motor Vehicles Act for claiming compensation. Therefore, the filing of the present claim petition under Section 163-A of the Act is not maintainable.

11. The insurance policy has got a personal accident coverage. Since the deceased gets substituted in the place of the owner of the vehicle, he is always entitled to receive a sum of Rs.1,00,000/- (Rupees One Lakh only) under the personal accident coverage. However, this

Court in a judgment reported in ***2020 (1) TN MAC 646 (Divisional Manager, Oriental Insurance Co. Ltd., Vellore Vs. R.Damodharan & Another)*** in Paragraph No.10 has held that unless the owner/borrower of the vehicle is holding a valid and effective driving license, the question of invoking personal accident cover would not arise. In the present case, the insurance company has issued notice to the 1st respondent to produce the driving license of the deceased. However, the same has not been produced. The insurance company has also called for the records from Regional Transport Office, Ambasamudram and Dharmapuri under Exhibits R.1 and R.2 to establish that the deceased was not having any driving license. The insurance company has also examined the Assistant working in Regional Transport Office, Ambasamudram as R.W.2 to establish that the deceased was not having any driving license. Therefore, it is clear that the insurance company has taken sufficient steps to prove that the deceased was not having any driving license at the relevant point of time. The claimants have not produced the driving license of the deceased at the time of the accident. Therefore, in view of the judgment of our High Court, the owner/borrower of the vehicle who is not holding a valid driving license at the time of the accident, will not be entitled to invoke personal accident policy also.

12. In view of the above said deliberations, the quantum of the award of Rs.4,00,000/- (Rupees Four Lakh only) is hereby confirmed. The appellant, namely the insurance company is hereby exonerated and the liability is fixed upon the owner of the vehicle, namely the 1st respondent in the claim petition and the 4th respondent in the appeal. The amount deposited by the insurance company pursuant to the award shall be refunded to the company along with accrued interest.

13. In view of the above said observations, this Civil Miscellaneous Appeal stands allowed to the extent as stated above. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

27.03.2023

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

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To

1.The Motor Accidents Claims Tribunal
cum II Additional District Judge,
Tirunelveli.

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.195 of 2017

27.03.2023