BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **06.06.2023**

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THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.883 of 2017

The Branch Manager,
Reliance General Insurance Company Ltd.,
Trichy. ... Appellant/2nd Respondent

Vs.

1.Marikannu

2.Kanimozhi

3.Minor.Kathiravan

4.Minor.Kayalvizhi

5.Arumugam

6.Mariyayi ... Respondents/Petitioners 1-6

(Minor respondents 3 & 4 are represented by guardian and mother 1st respondent)

7.Jeyakumar ... Respondent/1st Respondent

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, to set aside the decree and judgment of Motor Accident Claims Tribunal – Additional District Judge of Pudukottai, dated 21.12.2015 in M.C.O.P.No.466 of 2012 and allow the appeal.

For Appellant : Mr.V.Sakthivel

For R1-R6 : Mr.T.Lenin Kumar

For R7 : No Appearance

JUDGMENT

The present appeal has been filed by the insurance company challenging the award passed by the Motor Accident Claims Tribunal, Pudukkottai in M.C.O.P.No.466 of 2012 primarily on the ground of liability.

2. According to the claimants, the deceased Rengasamy had borrowed the vehicle owned by the 1st respondent in the claim petition and while he was driving the said two wheeler, he had dashed against a stone and fell down and succumbed to the injuries. The said vehicle is insured with the 2nd respondent in the claim petition.

3. The owner of the two wheeler had remained ex parte and the insurance company had filed a counter contending that the deceased being borrower of the two wheeler from the owner, he is the deemed owner of the vehicle at the time of the accident. Therefore, he cannot claim compensation from his own insurance company. The insurance company has further contended that at the time of accident, the deceased

was not having any driving license.

4. The tribunal after considering the oral and documentary evidence, arrived at a finding that the accident has taken place only due to the rash and negligent driving on the part of the deceased person. The tribunal further found that the deceased was not having any driving license at the relevant point of time. However, the tribunal proceeded to pass an award of Rs.9,99,000/- holding that the respondents 1 and 2 are jointly and severally liable to pay the said compensation. This award is under challenge in the present appeal.

5. According to the learned counsel appearing for the appellant/insurance company, the deceased being a tortfeasor and a borrower of the vehicle from the owner, he is not entitled to receive any compensation from his own insurance company. He is also not eligible to receive any amount under the personal accident coverage in view of the fact that he was not having valid driving license at the relevant point of time. Therefore, the tribunal was not right in holding that the owner of the vehicle and the insurer as jointly and severally liable to pay the said compensation. Hence, he prayed for exonerating the appellant insurance company from satisfying the said award.

6. Per contra, the learned counsel appearing for the claimants had contended that the insurance company has already satisfied the award passed in favour of the injured claimant who was a pillion rider. He further contended that the deceased was not a insured person and he should be treated as a third party to the contract and the insurance company should be made liable to pay the said compensation. Hence, he prayed for sustaining the award passed by the tribunal.

7. Though the owner of the vehicle, namely the insured was also held jointly and severally liable by the tribunal, he has not chosen to file any appeal before this Court. However, the appellant is not able to serve upon the said owner of the vehicle.

8. In view of the fact that the owner of the vehicle has not chosen to challenge the joint and several liability, this Court finds that he is not a necessary party to the appeal filed by the insurance company and proceeds to pass orders on the basis of the submissions made on the side of the appellant insurance company.

9. As rightly contended by the learned counsel appearing for the appellant, the deceased was the tortfeasor and he was the borrower from the owner of the vehicle. Therefore, he is not entitled to receive any

compensation from his own insurance company, especially when there is no offending vehicle.

10. As rightly pointed out by the learned counsel appearing for the appellant, the tribunal has given a specific finding for issue no.2 that the deceased was not having any driving license at the relevant point of time. Therefore, the question of invoking personal accident policy also would not arise. Therefore, the tribunal was not right in holding that the owner of the vehicle and the insurer as jointly and severally liable to satisfy the award.

11. In view of the above said deliberations, the appellant insurance company is exonerated from the liability to satisfy the award. However, the award of the tribunal as against the 1st respondent in the claim petition, namely the owner of the two wheeler is hereby confirmed.

12. The Civil Miscellaneous Appeal stands allowed to the extent as stated above. No costs.

06.06.2023

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

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To

1.The Motor Accident Claims Tribunal –
Additional District Court,
Pudukottai.

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.883 of 2017

06.06.2023