



C.M.A.(MD).No.359 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.06.2023

CORAM

THE HONOURABLE MR.JUSTICE N.SATHISHKUMAR

C.M.A.(MD).No.359 of 2023

1.Umarsherif
2.Bharakathnisha

... Appellants

Vs.

1.Suganya

2.The Manager,
The Reliance General Insurance Company Limited,
80 Feet Road,
Anna Nagar,
Madurai 625 020.

... Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, against the judgment and decree dated 15.12.2021 passed in M.C.O.P.No.2090 of 2017 on the file of the Special District Court to deal Motor Accident Cases, Madurai.

For Appellants	:	Mr.V.Sriram
For R2	:	Mr.V.Sakthivel



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J U D G M E N T

Challenging the dismissal of the application filed seeking compensation, on account of the death of the son of claimants, the present appeal came to be filed.

2. The brief facts leading to the filing of this appeal are as follows:

On 26.06.2017, at about 1.00 hour, while the deceased was riding a motorcycle bearing Registration No.TN 50 BU 7150 belonged to the first respondent, near A.Vallalpatti Naickanpatti Vilakku, a cow was suddenly crossed the road. To avoid hitting the cow, the deceased applied the break. As a result, the motorcycle capsized and the deceased sustained grievous injuries and succumbed to injuries on 28.06.2017. Therefore, the claimants being the parents of the deceased filed a petition before the Tribunal seeking compensation. The second respondent/Insurance Company has disputed the accident, on the ground that the deceased in a drunken mood rode the vehicle without any licence and without wearing the helmet invited the accident.



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3. Before the Tribunal, on the side of the petitioners, P.Ws.1 and 2 were examined and Exs.P1 to P13 were marked and on the side of the respondents, R.Ws.1 to 3 were examined and Exs.R1 and R2 were marked and Exs.X1 and X2 were also marked.

4. Based on the materials, the Tribunal has dismissed the application, on the ground that the deceased did not possess valid driving licence, which has been established by the Insurance Company. Therefore, the Personal Accident coverage cannot be granted. Challenging the same, the present appeal came to be filed by the claimants.

5. The learned counsel appearing for the appellants would submit that though R.W.2 has spoken that no licence was issued to the deceased from the R.T.O. Office, Melur, Madurai District, the possibility of licence from other area cannot be ruled out and the owner of the vehicle has not disputed the same. Hence, the Personal Accident coverage cannot be avoided.



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6. In the light of the above submissions, now the points for consideration in this appeal is (i) Whether the claimants are entitled to claim a compensation on the basis of P.A. coverage, which was taken by the owner of the vehicle ? (ii) Whether the Insurance Company is liable to pay the compensation?

7. Though the owner of the vehicle has been made as a party, he remained ex-parte. This fact clearly indicate that in fact he has allowed the deceased to ride the motorcycle, such being the position, once the vehicle has been borrowed by the deceased from the owner and rode the vehicle, the deceased normally stepped into the shoes of the original owner. Therefore, the insurance in respect of the P.A. coverage is payable to the deceased. This aspect is not in dispute. But, it is relevant to note that for payment of P.A. coverage, certain parameters and conditions are mandatory. It is purely personal contract between the Insurance Company and the insurer and only on showing the fact that there was no violation of the policy conditions and other violations, the P.A. coverage normally will payable. It is the specific contention of the second respondent herein



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that the deceased did not have a valid licence and to substantiate the same, R.W.2 was examined and her evidence clearly show that there was no licence issued to the deceased from the RTO Office, Melur, Madurai District, where the deceased was permanently residing. It is further to be noted that P.W.1, the mother of the deceased also admitted in her evidence that the deceased did not possess valid driving licence at the relevant point of time.

8. Such being the position, this Court is of the view that when the policy condition has been clearly violated and the deceased did not have a valid licence, the P.A. coverage cannot be directed to be paid, as per the contract.

9. In such a view of the matter, I do not find any merit in this appeal. Accordingly, the Civil Miscellaneous Appeal is dismissed. No costs.

22.06.2023

NCC:Yes/No
Index:Yes/No
akv



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To

- 1.The Special District Court,
Motor Accident Cases, Madurai.
- 2.The Record Keeper,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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N.SATHISHKUMAR, J.

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