BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED**: 25.04.2023**

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.M.A(MD)No.287 of 2023

1.V.Karuppiah

2.K.Jegajothy :Appellants/claimants

.vs.

1.P.Madhan Alexandar

2.The Divisional Manager,I HUB ,
United India Insurance Company,
West Veli Street,
Madurai – 625 001. :Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act against the order made in M.C.O.P.No.164 of 2016, dated 01.08.2022, on the file of the Motor Accidents Claims Tribunal/The Special District Court to deal with Motor Accident Cases, Madurai.

For Appellants :Mr.K.Kumaravel

For Respondent-2 :Mr.A.S.Mathialagan

JUDGMENT
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Aggrieved over the dismissal of the claim petition by the claimants/legal heirs of the deceased, the present Civil

Miscellaneous Appeal came to be filed.

2.The parties are referred to herein as per their ranking before the Tribunal.

3.The facts leading to the filing of this appeal are as follows”

The deceased was a practising lawyer and on 3.6.2016, as usual, after completing his job at about 8.30 p.m., while returning from Madurai to his native place Palamedu in a two wheeler bearing Registration No. TN 63 M 6886 TVS Sports Vehicle, at that time, a car was coming infront of his vehicle with bright and dazzling light and he tried to swerve his vehicle to his left side in order to avoid the possible accident, but he was thrown away into the road side ditch/field and succumbed to injuries on the sport. A crime was also registered in this regard. He was earning a sum of Rs.10,000/-p.m. Hence his legal heirs, as claimants, have filed this claim petition claiming compensation.

4.The first respondent took a stand that the vehicle was insured with the second respondent. The second respondent took a stand that the deceased rider of the motor cycle was neither insured or a paid driver. Therefore since he himself is a tortfeasor, he cannot claim any compensation.

5.Before the Tribunal, on the side of the Petitioners, P.W.1 and P.W.2 were examined and Ex.P1 to Ex.P15 were marked. On the side of the respondents, R.W.1 was examined and no document was marked.

6.Based on the evidence, the tribunal dismissed the claim petition on the ground that the deceased himself is a tortfeasor and hence his legal heirs are not entitled to claim any compensation under Section 163-A of the Motor Vehicles Act.Challenging the same, the present appeal came to be filed.

7.It is the contention of the learned counsel for the Petitioners that though the deceased was a tortfeasor, the vehicle was covered under the insurance coverage at the relevant point of time. It is a compulsory Personal Accident Policy to the owner cum driver. The deceased was not the driver but he stepped into the shoes of the owner of the vehicle. As the policy coverage is compulsory to the tune of Rs.1 lakh, the claimants are entitled to the said amount, whereas, the learned counsel for the second respondent Insurance Company would submit that though the policy was a personal Accident Policy for driver, the Petitioner was not the driver of the two wheeler. He borrowed the two wheeler from the owner of the vehicle and met with the accident.

8.Based on the above facts, the point that arose for consideration in this appeal is as follows:

1.Whether the Petitioners are entitled to claim compensation under the Personal Accident Coverage as per contract?

9.It is not disputed that the deceased is not the driver of the vehicle. It is stated in the claim petition that he was a practising lawyer and the statement that he is the driver of the two wheeler cannot be countenanced. The claim petition has been filed under Section 163-A of the Motor Vehicles Act. In fact, the driver is not the owner of the motor cycle, the vehicle had been driven by another, therefore deceased stepped into the shoes of the owner of the vehicle, as per the dictum laid down by the Honourable Apex Court in the case of **Ningamma and another .vs. The United India Insurance Company Limited reported on 2009(2) TN MAC 169(SC).** Therefore, once the rider of the vehicle stepped into the shoes of the owner, this Court is of the view that the policy is covering the personal accident including the owner and the amount of Rs.1 lakh under the policy has to be given to the legal heirs of the deceased. As the Personal Accident Policy covers upto Rs.1 lakh, which is not disputed by the learned counsel for the second respondent, this Court is of the view that at least the claimants are entitled to the said sum of Rs.1 lakh, as per the policy.

10. In such view of the matter, the Civil Miscellaneous Appeal is allowed and the appellants are entitled to a sum of Rs.1 lakh alone towards compensation from the second respondent Insurance Company. The second respondent Insurance Company is directed to deposit the above said amount to the credit of the claim petition before the Tribunal within a period of one month from the date of receipt of a copy of this judgment. On such deposit being made, the claimants 1 and 2 are entitled to Rs. 50,000/- each and they are permitted to withdraw the same from the Tribunal by filing necessary application before the Tribunal. No costs.

25.04.2023

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

vsn

To

1.The Motor Accidents Claims Tribunal,
The Special District Court to deal with Motor Accident Cases,
Madurai.

2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

<u>N.SATHISH KUMAR.,J.</u>

vsn

<u>JUDGMENT MADE IN</u>
<u>C.M.A(MD)No.287 of 2023</u>

25.04.2023