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CMA.No.281 of 2023

In the High Court of Judicature at Madras

Dated : 04.7.2024

Coram :

The Honourable Mr.Justice N.ANAND VENKATESH

Civil Miscellaneous Appeal No.281 of 2023

1.Jayalakshmi

2.Rajamannar

...Appellants

Vs

1.A.Selvarathinam

2.The Oriental Insurance Company
Ltd., Divisional Office, Gopalrao
Library Building, Town Hall Road,
Kumbakonam.

...Respondents

APPEAL under Section 173 of the Motor Vehicles Act, 1988
against the judgment and decree passed by the Special District Court
for Motor Accident Claims Cases, Krishnagiri in MCOP.No.605 of 2019
dated 10.12.2021.

For Appellants	:	Ms.R.Shase
For R-1	:	Mr.R.Ganesh Kumar
For R-2	:	Mr.J.Chandran

JUDGMENT

The claimants, who are the parents of one Mr.Muralidharan,
who died in a motor accident, have filed this appeal aggrieved by the



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dismissal of their claim petition through the judgment dated 10.12.2021 in MCOP.No.605 of 2019 on the file of the Special District Court for Motor Accident Claims Cases, Krishnagiri (for short, the Tribunal below).

2. Heard the learned counsel for the appellants, the learned counsel appearing for the first respondent and the learned counsel for the second respondent.

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

(i) On 25.11.2017, the said Mr.Muralidharan was proceeding from Hosur to Coimbatore to attend a wedding in a two wheeler. The specific case of the claimants is that the vehicle owner had authorized the said Mr.Muralidharan to drive the vehicle. At about 9.30 hours, when the two wheeler reached the place of occurrence, there was a road divider, in which, the two wheeler had dashed and as a result, the said Mr.Muralidharan died on the spot. It was under those circumstances, the claim petition came to be filed by the appellants seeking for payment of compensation.

(ii) The Tribunal below, on considering the facts and circumstances of the case and on appreciation of the oral and documentary evidence, came to the conclusion that the deceased in



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this case was a tort-feasor and that therefore, the claim petition itself could not be maintained under Section 166 of the Motor Vehicles Act, 1988 (for short, the Act). The Tribunal below also came to the conclusion that there was a violation of the terms of policy and that the appellants would not be entitled to any amount under the package policy. Aggrieved by the dismissal of the claim petition by the Tribunal below, the appellants are before this Court.

4. This Court has carefully considered the submissions of the learned counsel on either side. This Court has also carefully gone through the impugned judgment of the Tribunal below.

5. The learned counsel for the appellants submitted that under the General Regulations of the India Motor Tariff, the Insurance Company must indemnify the insured in the event of an accident caused by using the insured vehicle in the case of a death or bodily injury. According to her, since the deceased was authorized to drive the vehicle belonging to the owner, he would have automatically stepped into the shoes of the owner of the vehicle. She further submitted that the Tribunal below ought to have granted compensation in the claim petition filed under Section 166 of the Act.



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6. In the considered view of this Court, the above submissions made by the learned counsel for the appellants are unsustainable. On appreciation of the evidence, it is seen that the accident was caused due to the negligence of the deceased and he is the tort-feasor. Therefore, a tort-feasor cannot make any claim under Section 166 of the Act.

7. The law on this issue is now too well settled. The General Regulations of the India Motor Tariff, which is brought to the notice of this Court, cannot outweigh the provisions of the Act, which is a Central Legislation.

8. It will be beneficial to take note of the judgment of the Apex Court in the case of ***Ramkhiladi Vs. United India Insurance Co. Ltd. [reported in 2020 ACJ 627]*** wherein the Apex Court categorically held that where a person, who borrowed a motor cycle, meets with an accident resulting in fatality due to his own negligence, the legal heirs of the deceased cannot maintain a petition either under Section 163A or under Section 166 of the Act.

9. The next issue is with regard to the entitlement of the amount under the package policy. The owner of the vehicle took a



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stand that he never authorized the deceased to use the vehicle.

However, the Tribunal below came to the conclusion that the owner of the vehicle was aware of the vehicle being taken by the deceased. Having rendered such a finding, the Tribunal below found that the owner of the vehicle ought not to have given the vehicle for hire or reward, that the same would be in violation of the policy conditions and that therefore, the claimants/appellants would not be entitled even for the amount under the package policy.

10. Taking into account the totality of the facts and circumstances of the case, this Court holds that the deceased in this case can be considered as a person duly authorized to drive the two wheeler and that the parents of the deceased/claimants will be entitled to a sum of Rs.1 lakh under the package policy. The findings of the Tribunal below holding otherwise are hereby set aside. The said sum of Rs.1 lakh shall be deposited by the second respondent - Insurance company before the Tribunal below within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit, the said sum shall be permitted to be withdrawn by the appellants/claimants.



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11. In the result, the above civil miscellaneous appeal is partly allowed in the above terms. No costs.

04.7.2024

Index : Yes (or) No

Neutral Citation : Yes (or) No

To

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Motor Accident Claims Cases,
Krishnagiri.

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RS



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