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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13 .02.2024

CORAM:

THE HON'BLE MRS.JUSTICE R.KALAIMATHI

C.M.A.No.1866 of 2021

The Manager,
United India Insurance Co., Ltd.,
No.46-51, Katpadi, Vellore – 4
now at
Motor Third Party Service Hub,
A.R.Plaza, Nos.35 to 37
45 feet road, Extension,
Balaji nagar,
Puducherry – 605 011 ... Appellant

Versus

Arumugam (died)
Anjali (died)
1. Sekar
2. Balaraman ... Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicle Act, 1988 to set aside the Judgment and decree dated 28.07.2020 passed in M.C.O.P.No.145 of 2014 by the Motor Accident Tribunal / learned Subordinate Judge, Court of Small Causes Vaniyambadi and allow the present Civil Miscellaneous Appeal.

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For Appellant : Mr.P.Sankaranarayanan

For Respondent : R1 & R2 died
Mr.M.K.Parandhaman for R3 and R4

ORDER

This Civil Miscellaneous Appeal is focused against the Judgment and Decree dated 28.07.2020 passed in M.C.O.P.No.145 of 2014 on the file of Motor Accident Claim Tribunal / Sub Court, Vaniyampadi, as regards the liability issue.

2. The claim petition was filed under Section 163A of Motor Vehicles Act by the legal heirs of one Arjunan, claiming compensation of Rs.15,00,000/- for the death of Arjunan, son of Arumugam in an accident that occurred on 05.10.2010.

3. The Tribunal after evaluating the evidence granted compensation of Rs.13,02,240/-, fastened liability on the Insurance Company to pay the same.

4. The learned counsel, Mr.P.Sankaranarayan, appearing for the Appellant - Insurance Company strenuously argued that the claim

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petition was filed by the legal heirs of the owner of the auto: As per FIR, while the auto driver was trying to overtake the tractor, died of the accident: There is no personal accident coverage for the deceased owner cum driver of the auto: The tribunal misconstrued the owner as employee.

5. To buttress his arguments, the learned counsel for the appellant has referred to the Judgment rendered in *Oriental Insurance Company Vs. Rajni Devi and Others reported in MANU / SC / 2091/ 2008.* The ratio decidendi is that "Section 163A does not have any application in regard to an accident wherein the owner of the vehicle himself involved and liability under Section 163A is on the owner of the vehicle, as a person cannot be both, a claimant as also a recipient.

6. Per contra, the learned counsel appearing for the respondents / claimants vehemently contended that at the relevant point of time, owner of the auto was driving the vehicle. The trial court has rightly observed the same and as per the terms of the policy, that the premium is paid for the employee driver. Hence, the appellant is liable to pay compensation to the claimants.

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7. At trial, two witnesses were examined on the claimants' side and six documents were marked. The copy of the insurance policy pertaining the auto bearing registration no.TN-09-5862 is Ex.P.3 / Ex.R.8. On the side of the respondent / Insurance Company, one witness was examined and eight documents were marked.

8. It has come on record that on 05.10.2010, at about 5.45 hours, when the deceased Arjunan was driving his auto bearing Regn.No.TN-09-5862 at a slow speed along the left side of Vaniyambadi -Thirupathur main road, at the point of chinna Veppampet - Priyadarshini College Junction road, a tractor which was proceeding in the same direction bearing registration no. TN-28-X-4725, which was driven by its driver in a rash and negligent manner without signal, all of a sudden, turned right side of the road. Due to the said negligent driving of the driver of the tractor, the auto hit on the tractor and the auto driver sustained serious injuries and succumbed to the injuries. The FIR was registered against the driver of the tractor bearing registration no.TN-28-X-4725. Due to the rash and negligent driving of the driver of the tractor, accident happened, is not in dispute.

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9. The insurance company filed a counter stating that the deceased was owner-cum-driver of the auto. The insurance policy of the auto is an act policy, does not cover the risk of driver, therefore, the legal heirs of the deceased cannot maintain the claim against insurance company.

10. The law is well settled that under Section 163A of Motor Vehicles Act, tort-feasor cannot maintain the claim; there cannot be claimant as well as recipients. Whereas in this case, the deceased is not a tort-feasor. It was held that due to the rash and negligent driving of the driver of the tractor, accident occurred and the driver of auto sustained severe head injuries and succumbed to the accident. The claim petition was filed against the insurer of auto.

11. The copy of the policy is Ex.P.3 / Ex.R.8. The policy is a liability only policy. On a careful perusal of the policy, in page no.4, one of the terms of the policy is personal accident cover for owner cum driver. The said terms of the policy is extracted hereunder:-

> *“**Personal Accident Cover for Owner – Driver***
> *Subject otherwise to the terms exceptions conditions*

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and limitations of this policy, the Company undertakes to pay compensation per the following scale for bodily injury / death sustained by the owner – driver of the vehicle in direct connection with the vehicle insured or whilst mounting into / dismounting from or travelling in the insured vehicle as a co-driver, caused by violent, accident, external and visible means which independently of any other cause shall within six calender months, on such injury result in death scale of compensation 100%"

12. As per the policy, deceased Arjunan is the owner of the auto. It has come on record that on the date of the accident, he was driving the auto. So, he was the owner cum driver. As per the terms of the policy, owner cum driver is covered by the terms. It is relevant to note that due to the rash and negligent driving of the tractor / driver, the accident occurred.

13. In Oriental Insurance Co. Ltd. Vs. Rajini Devi and Others reported in (2008) 5 SCC 736 (Civil Appeal No.2892 of 2008 Judgment dated 22.04.2008) in an application under Section 163A of the Motor Vehicles Act, 1988, the motorcycle is said to have gone out of control resulting in the accident. The deceased Janak Raj was riding on the

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motorcycle along with one Sukhdev Raj. It has been held that "...It is now a well settled principle of law that in a case where third party is involved, the liability of the insurance company would be unlimited. Where, however, compensation is claimed for the death of the owner or another passenger of the vehicle, the contract of insurance being governed by the contract qua contract, the claim of the insurance company would depend upon the terms thereof."

14. It is useful to refer *to the Judgment of the Hon'ble Supreme Court in Dhanraj Vs. New India Assurance Company Limited and another* reported in *(2004) 8 SCC 553.* The Hon'ble Supreme Court has observed as follows:

> *"8. Thus, an insurance policy covers the liability incurred by the insured in respect of death of or bodily injury to any person (including an owner of the goods or his authorised representative) carried in the vehicle or damage to any property of a third party caused by or arising out of the use of the vehicle."*

15. The crucial question is whether Ex.R.8 Policy, shall cover the death of the owner of the vehicle also. For easy understanding Section

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147 of the Motor Vehicles Act, 1988 is extracted hereunder:-

" 147. Requirements of policies and limits of liability.—

(1) In order to comply with the requirements of this Chapter, a policy of insurance must be a policy which—

(a) is issued by a person who is an authorised insurer; and 1.Ins. by Act 54 of 1994, s. 45 (w.e.f. 14-11-1994). 76

(b) insures the person or classes of persons specified in the policy to the extent specified in sub-section (2)—

(i) against any liability which may be incurred by him in respect of the death of or bodily 1 [injury to any person, including owner of the goods or his authorized representative carried in the vehicle]or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place;

(ii) against the death of or bodily injury to any passenger of a public service vehicle caused by or arising out of the use of the vehicle in a public place: Provided that a policy shall not be required—

(i) to cover liability in respect of the death, arising out of and in the course of his employment, of the employee of a person insured by the policy or in respect of bodily injury sustained by such an employee arising out of and in the course of his employment other than a liability arising under the Workmen's Compensation Act, 1923 (8 of 1923), in respect of the death of, or bodily injury to, any such employee—

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(a) engaged in driving the vehicle, or

(b) if it is a public service vehicle engaged as a conductor of the vehicle or in examining tickets on the vehicle, or

(c) if it is a goods carriage, being carried in the vehicle, or (ii) to cover any contractual liability. Explanation.—For the removal of doubts, it is hereby declared that the death of or bodily injury to any person or damage to any property of a third party shall be deemed to have been caused by or to have arisen out of, the use of a vehicle in a public place notwithstanding that the person who is dead or injured or the property which is damaged was not in a public place at the time of the accident, if the act or omission which led to the accident occurred in a public place.

(2) Subject to the proviso to sub-section (1), a policy of insurance referred to in sub-section (1), shall cover any liability incurred in respect of any accident, up to the following limits, namely:—

(a) save as provided in clause

(b), the amount of liability incurred;

(b) in respect of damage to any property of a third party, a limit of rupees six thousand: Provided that any policy of insurance issued with any limited liability and in force, immediately before the commencement of this Act, shall continue to be effective for a period of four months after such commencement or till the date of expiry of such policy

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whichever is earlier.”

16. Having gone through the above said provision in entirety, Section 147 of Motor Vehicle Act does not require the insurance company to cover the risk of death or bodily injury to the owner of the vehicle.

17. More specifically, in Ex.P8 Insurance Policy, it covers liability incurred by the insured in respect of death (or) bodily injury to any person (including an owner of the goods (or) his authorised representative) carried in a vehicle or damage to any property of a third party caused by (or) arising out of the use of the vehicle.

18. Further, the policy, namely, Ex.R-8, as mentioned supra covers the death of owner – cum driver.

19. In this case, the owner cum driver was driving the auto at the time of accident and he died in the accident, due to the fault of the driver of the tractor. As per the terms of the policy (Ex.P.3 / Ex.R.8), the personal accident coverage for owner cum driver is given: The

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percentage is 100. Therefore, it shall not lie in the mouth of the insurance company that the owner cum driver is not covered under the terms of the policy. The insurance company is liable to pay compensation as per the terms of the policy. The Tribunal has rightly held that the insurance company is liable to pay compensation to the claimants, as they are the legal heirs of owner cum driver of Auto Arjunan.

20. Based on the aforestated discussions, the present Civil Miscellaneous Appeal stands dismissed. In the result, the Judgment and decree dated 28.07.2020 in M.C.O.P.No.145 of 2014 on the file of MACT / Sub Court, Vaniyambadi stands confirmed. There is no order as to costs.

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Index: Yes/No
Internet: Yes/No

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To

The Subordinate Judge,
Court of Small Causes, MACT, Vaniyambadi

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R.KALAIMATHI, J.

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