IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.06.2024

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A. No.1957 of 2021
and
C.M.P. No.10525 of 2021

The Manager,
M/s.IFFCO-TOKIO General
Insurance Company Ltd.,
Chennai. .... Appellant

vs.

1. Chitra
2. Sangeeth Kumar
3. Minor Sujeeth Kumar
Minor represented by Natural Guardian
and next friend, mother Chitra, 1st respondent.
4. Muthusamy
5. Chinnammal
6. S.K. Kesanathan .... Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 to set aside the decree and judgment dated 23.04.2019 passed in M.C.O.P. No.71 of 2015, by the Motor Accidents Claims Tribunal (In the Sub Court) at Perundurai.

For Appellant : Mr.J. Michael Visuvasam
For Respondents : R1, R2 & R6 – No appearance
R3 – Minor
R4 & R5 - Died

JUDGMENT

This appeal has been filed by the Insurance Company challenging its liability to pay the compensation on the ground that since the rider of the vehicle has stepped into the shoes of the owner(insured), the claimants are not entitled for any compensation.

2. Heard Mr.J. Michael Visuvasam, learned counsel for the appellant / Insurance Company. Despite service of notice on the respondents, they have chosen not to enter appearance in this appeal.

3. This Court has perused and examined the impugned award passed by the Tribunal.

4. The learned counsel for the appellant / Insurance Company relies upon a judgment of the Hon'ble Supreme Court in the case of ***Ramkhiladi & Anr. vs. The United India Insurance Company & Anr. rendered in Civil Appeal No.9393 of 2019*** in support of the appellant's contention. In the case on hand, admittedly, the rider of the motor cycle insured with the appellant had borrowed the vehicle from the 6th respondent (owner of the vehicle) when the accident happened which resulted in the claim. Since the rider of the motor cycle had borrowed the

vehicle from the insured, he has stepped into the shoes of the insured and therefore, the claim made by the claimants is not a 3rd party claim even though the claim has been made under Section 163-A of the Motor Vehicle's Act. Even for a claim under Section 163-A of the Motor Vehicles Act, it should be a 3rd party claim as per the decision rendered by the Hon'ble Supreme Court in the ***Ramkhiladi's*** case referred to supra. Admittedly, when the rider of the motor cycle is not a 3rd party, his dependants, who are the claimants are not entitled to seek compensation from the appellant Insurance Company, who has insured the vehicle owned by the 6th respondent from whom the rider of the motor cycle has borrowed the vehicle. However despite the well settled law as laid down by the Hon'ble Supreme Court in ***Ramkhiladi's*** case, as referred to supra, the Tribunal has erroneously passed the impugned award making the appellant Insurance Company liable to pay the compensation. In view of the well settled law, necessarily, the impugned award has to be set aside by this Court insofar as the appellant Insurance Company is concerned. Accordingly, the impugned award, dated 23.04.2019 passed against the appellant Insurance Company is hereby set aside and this Civil Miscellaneous Appeal is allowed. No costs. Consequently, connected miscellaneous petition is closed.

5. The appellant / Insurance Company is permitted to withdraw whatever amount that was earlier deposited by them before the Tribunal by filing an appropriate application.

04.06.2024

Index: Yes/No
Internet: Yes/No
Speaking Order/Non-Speaking Order
vsi2

ABDUL QUDDHOSE, J.

vsi2

To
1. The Sub Judge,
Motor Accidents Claims Tribunal
Perundurai.

2.The Section Officer,
V.R. Section, High Court of Madras,
Chennai – 104.

C.M.A. No.1957 of 2021

04.06.2024