IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.04.2024

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A. No.1806 of 2020 and C.M.P. No.13291 of 2020

The Divisional Manager,
The New India Assurance Co. Ltd.,
No.14/7, K.G.Swamy Complex,
Bagalur Road,
Hosur - 635 109. .. Appellant

Vs.

1.Chandra Prakash

2.Megala

3.V.Puviarasan

4.Gayathri

5.N.Srinivasan .. Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and judgment dated 04.02.2020 made in M.C.O.P. No.112 of 2014 on the file of the Motor Accidents Claims Tribunal, Additional District Court, Hosur.

For Appellant : Mr.S.Dhakshnamoorthy

For Respondents : Mr.PA.Sudesh Kumar for R1
R2 to R4 - Disd - 12.04.2024
R5-No appearance

JUDGMENT

This appeal has been filed by the appellant/Insurance Company, challenging their liability to pay compensation on the ground that the first respondent/claimant is himself a Tort Feasor and he has stepped into the shoes of the insured by borrowing the vehicle from him.

2.The first respondent/claimant is the rider of the motor cycle, insured with the appellant/Insurance Company which dashed against the Tata ACE Van, which proceeded in front of his vehicle.

3.The Tribunal has given a finding that there is 30% contributory negligence on the part of the respondents 2 to 4 and 70% contributory negligence on the part of the driver of the Tata ACE Van. The appellant/ Insurance Company has not questioned the quantum of compensation but has only questioned the liability to pay compensation in this appeal.

4.Admittedly, as seen from the impugned Award as well as from the evidence available on record, the first respondent/claimant had borrowed the vehicle from the owner/insured viz. the fifth respondent. The two wheeler was insured with the appellant. Being the borrower of the vehicle, the first respondent/claimant stepped into the shoes of the owner, viz. the fifth respondent as held by the Hon'ble Supreme Court in the case of Ramkhiladi and others vs. The United India Insurance Company and others reported in MANU/SC/0008/2020. The Hon'ble Supreme Court in the said decision has held that a borrower of the vehicle, being a Tort Feasor himself cannot claim compensation. The Tribunal by total non-application of mind of the settled law, has erroneously held the appellant/Insurance Company liable to pay compensation.

5.In view of the same, the Award passed by the Tribunal has to be set aside by this Court and this Appeal will have to be allowed. Accordingly, the impugned Award dated 04.02.2020 is hereby set aside and this appeal is allowed insofar as the award passed against the appellant/Insurance Company is concerned.

ABDUL QUDDHOSE, J.

vga

6.Liberty is granted to the first respondent/claimant to proceed against the remaining respondents in the impugned award for recovery of the compensation amount in the manner known to the first respondent/ claimant under law. No costs. Consequently, connected petition is closed.

26.04.2024

vga

To

1.The Motor Accidents Claims Tribunal,
Additional District Court, Hosur.

2.The Section Officer,
V.R. Section, High Court, Madras.

C.M.A. No.1806 of 2020 and C.M.P. No.13291 of 2020