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C.M.A.No.2934 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.02.2024

CORAM:

THE HONOURABLE **MR.JUSTICE RMT.TEEKAA RAMAN**

C.M.A.No.2934 of 2021

1.Malar
2.Ramalingam

... Appellants

Vs.

The New India Assurance Company Limited,
Motor Third Party Claims,
No.232, Bombay Mutual Building,
6th Floor, N.S.C.Bose Road,
Chennai - 600 001.

... Respondent

Prayer: This Civil Miscellaneous Appeal is filed under 173 of the Motor Vehicles Act,1988, against the Judgment and Decree dated 07.04.2021 made in M.A.C.T.O.P.No.1885 of 2017 on the file of the Motor Accident Claims Tribunal, Special Sub Court -1, Small Causes Court, Chennai.

For Appellants : MrA.G.F.Terry Chella Raja
For M/s.M.Malar

For Respondent : Mrs.S.R.Sumathy

J U D G M E N T



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The claim petitioners are the appellants herein.

2. For the sake of convenience, the parties are referred to as per their rank in the claim petition.

3. The date of the accident and the manner of the accident, involvement of the vehicle and the said vehicle being duly insured with the respondent and the driver of the respondent are not in dispute.

4. The claim petitioners filed the above M.C.O.P.No.1885 of 2017 seeking enhancement of compensation for the death of the husband of the first claim petitioner in a road transport accident on 26.01.2017.

5. The Insurance company filed a counter stating that since the claim is filed for the death of insured / rider of motorcycle, the same is not maintainable as per the decision of the Hon'ble Supreme Court in 2005 ACJ 1 (SC) and as per Sadanand Mukhi (SC) & Ningamma (SC)'s case.



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6. After trial, the learned Judge came to the conclusion that even as per the case of the petitioner that on 26.01.2017 at about 10.50p.m., while the deceased was riding in his motorcycle bearing Registration No.TN 85 A 1802 from West to East direction at Musuri Subramanian Salai proceeding to his house at Mylapore, at that time a dog crossed the road, hence the deceased lost his control and fell down from the vehicle in front of Isabel Hospital. The deceased sustained multiple grievous injuries all over his body and immediately he was taken first aid treatment at Isabel Hospital and then he was admitted in Government Rajiv Gandhi General Hospital, Chennai and died at hospital despite of treatment and accordingly held that without intervention of any third party vehicle, the owner cum rider of the vehicle in order to avoid crashing of dog lost his control and fell down and sustained injuries. Hence he being the owner cum injury he cannot claim petition against the owner, following the decision reported in 2020 (1) TN MAC 600 in C.M.A.No.1017 of 2016 and C.M.P.No.7714 of 2016, between Branch Manager, Oriental Insurance Company Limited Vs.Poongavanam and 4 others and C.M.A.No.1428 of 2017 dated 26.10.2017 between The Divisional Manager United India Insurance Company Limited, Vs.R.Rekha and others,



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wherein it is held that:-

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"when the accident did not involve any other motor vehicle other than the one in which the deceased was travelling and the deceased himself was owner of the two wheeler and not third party, claim petitions cannot be entertained by the Tribunals".

and accordingly held that the claim petitioners are not entitled for any compensation. The finding rendered by the learned Motor Accident Tribunal Special Sub Court -1, Small Causes Court, Chennai, is well merited and well considered, does not require any interference at the appellate stage.

7. On perusal of Ex.R2, the Insurance Company had issued personal policy coverage for the owner of the vehicle, a sum of Rs.1 lakh as per the said coverage is payable to the death of the owner. Ex.R2 insurance policy also discloses the same which is admitted by R.W.1.

8. Hence this Civil Miscellaneous Appeal is partly allowed, setting aside the order of the Tribunal dismissing the claim petition filed by the petitioner, to the limited extent indicated above and the appellants are entitled to a sum of Rs.1 lakh as personal accident coverage, the respondent/Insurance Company shall deposit the same within a period of eight weeks from the date of receipt of a copy of this order. On such deposit being made, the claim



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petitioner/appellants are permitted to withdraw the said amount. There shall be no order as to costs.

07.02.2024

Index : Yes / No

Neutral Citation : Yes/No

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To

- 1.The Special Sub Court -1, Small Causes Court, Chennai.
- 2.The Section Officer,
VR Section, High Court,
Madras.



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RMT.TEEKAA RAMAN, J.

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**Judgment in
C.M.A.No.2934 of 2021**

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