IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 28.03.2024

CORAM:

THE HONOURABLE MRS. JUSTICE R.KALAIMATHI

C.M.A.No.2575 of 2017
and
C.M.P.No.14019 of 2017

M/s.Reliance General Insurance Co. Ltd.,
Sri Lakshmi Complex, First Floor,
Bharathi Street, Omalur Main Road,
Swarnapuri, Salem – 4. .. Appellant

Vs.

1.T.Jayaraman,
S/o. Thiruvengadam

2. Sumathi
W/o.Jayaraman

3. Saranya
W/o. Kumar

4. Tamilselvi
D/o.Jayaraman

5. R.Yuvaraj
S/o.Ramamurthy .. Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award and decree dated 07.10.2016 made in

M.C.O.P.No.1395 of 2012 on the file of the Motor Accident Claims Tribunal, Special District Court, Salem.

For Appellant : Mr.S.Arunkumar

For Respondents : No appearance

JUDGMENT

This Civil Miscellaneous Appeal has been preferred by the Insurance Company against the judgment and decree passed in M.C.O.P.No.1395 of 2012, dated 07.10.2016, on the file of the Motor Accident Claims Tribunal/Special District Court, Salem, as regards the liability issue.

2. The claim petition has been filed under Section 163-A of the Motor Vehicles Act, claiming compensation of Rs.10,00,000/- (Rupees Ten Lakhs only) for the death of one Thiyagarajan in a road accident that occurred on 29.02.2012.

3. The Tribunal upon consideration, passed an award for a sum of Rs.4,04,050/- (Rupees Four Lakhs Four Thousand and fifty only) holding the

second respondent liable to pay the said compensation on behalf of the first respondent therein.

4.The learned Counsel Mr.S.Arunkumar, appearing for the appellant vehemently contended that the deceased, who did ride the two wheeler died, has to be treated as permissive occupier and he gets into the shoes of owner. It is his further argument that as the claim petition was filed under Section 163-A of the Motor Vehicles Act, the annual income in the claim petition shall not exceed Rs.40,000/- (Rupees forty thousand only).

5.On receipt of notice, the respondents, who are claimants, remained absent.

6.At trial two witnesses were examined and 11 documents were marked on the respondent's side. Officials of the Insurance Company Mr.Durai was examined as R.W-1 and the insurance policy copy was marked as Ex.R-1.

7.The claim petition was resisted by the second respondent/Insurance

Company by stating that the accident happened only due the rash and negligent driving of the deceased/driver of TN-30-AM-0841 Honda Motorcycle. The deceased was the tortfeasor. Therefore, his legal heirs cannot maintain any claim as per law.

8.It has come on record that on 29.02.2012 at about 7.00 p.m. the deceased Thiyagarajan was riding a two wheeler bearing registration No.TN-30-AM-0841 along the Vazhappady main road at the point of Somampatty Lake bund he lost the control of the vehicle and hit on the parapet wall. Soon after the accident, he was taken to SPMM Hospital at Salem and died at the hospital on 01.03.2012.

9.From the evidence of P.W-1, it appears that the vehicle involved in the accident belongs to the friend of the deceased.

10.The claim petition was filed under Section 163-A of the Motor Vehicles Act r/w. Rule 3 of Tamil Nadu Motor Accident Claims Tribunal Rules. In order to decide about the issue of liability then the terms of the insurance policy has to be looked into. Ex.R-1 is the insurance policy copy. The insurance policy period was from 29.08.2011 to 28.08.2012. The date of accident was 29.02.2012. Therefore, as on the date of accident, policy was alive. It is useful to refer to the observations made by the Hon'ble Supreme Court in ***Ramkhiladi -vs- United India Insurance Company [(2020) 2 SCC 550]*** wherein it has been observed that "it is ultimately concluded by this Court that the liability under Section 163-A of the Act is on the owner of the vehicle as a person cannot be both, a claimant as also a recipient and, therefore, the heirs of the owner could not have maintained the claim in terms of Section 163-A of the Act. It is further observed that, for the said purpose, only the terms of the contract of insurance could be taken recourse to."

11.In this case, the deceased was driving a motorcycle which was borrowed from the real owner and while driving he met with an accident by hitting on the parapet wall without involving any other vehicle. The claim petition has been filed under Section 163-A of the Act by the legal representatives of the deceased against the owner of the motorcycle and his insurance company. Therefore, the deceased, who is a borrower, has stepped into the shoes of the owner of the vehicle.

12.In a claim petition under Section 163-A of the Act, there is no need for the claimants either to plead or to establish the negligence and/or that the death in respect of which the claim petition is sought to be established was due to wrongful act, neglect or default of the owner of the vehicle concerned. Section 163-A of the Act is based on the principle of no fault liability. It is relevant to note that the deceased should be a third party in order to maintain the claim under Section 163-A of the Act against the owner/insurer of the vehicle.

13.However, the parties are governed by the contract of insurance. Ex.R-1 policy was alive on the date of accident. In the premium schedule under the liability column for compulsory personal accident cover to owner/driver an amount of Rs.50/- was collected. The liability is limited to Rs.1,00,000/- (Rupees One Lakh only). Therefore, as per the terms of the policy, the claimants are entitled to be paid Rs.1,00,000/- (Rupees One Lakh only) with interest at the rate of 7.5% per annum from the date of claim petition.

14. Thus, the compensation awarded by the Tribunal is reduced from **Rs.4,04,050/-** to **Rs.1,00,000/-** which would carry interest at the rate of 7.5% per annum from the date of claim petition.

15. In the result,

(i) The Civil Miscellaneous Appeal is partly allowed. No costs.

(ii) The Compensation awarded by the Tribunal is reduced from **Rs.4,04,050/-** to **Rs.1,00,000/-**. This amount has to be apportioned as per the ratio adopted by the Tribunal. The appellant/Insurance Company shall deposit the modified award amount, after adjusting the amount if any already deposited, within a period of eight weeks from the date of receipt of a copy of this judgment. The appellant/Insurance Company is permitted to withdraw excess amount, if any lying in the Court deposit. On such deposit by the Insurance Company, the respondents 1 to 4/claimants 1 to 4 are permitted to withdraw their respective shares. Consequently, connected miscellaneous petition is closed.

28.03.2024

srm
Index: Yes/No

Internet : Yes/No
Speaking order/Non-speaking Order

To

1. Motor Accidents Claims Tribunal
   Special District Court, Salem.

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

R.KALAIMATHI.J.,

srm

C.M.A.No.2575 of 2017

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