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Civil Miscellaneous Appeal No.936 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.06.2024

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THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Civil Miscellaneous Appeal No.936 of 2024
and CMP No.8761 of 2024

United India Insurance Company Ltd.,
No.4, Promenade Road
Trichirappalli-I, Service Office
United India Insurance Co., Ltd.,
Pallivasal Street
Perambalur.

... Appellant

Vs.

1.Deepa

2.Minor.Nesan
(minor rep.by his natural guardian/mother
the 1st respondent Deepa)

3.Sarathambal

4.S.Umapathi

... Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree in M.C.O.P.No.812 of 2018, dated 06.09.2022, on the file of Motor Accident Claims Tribunal, (Principal District Judge) Perambalur.



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For Appellant : Mr.D.Bhaskaran

For Respondents : Mr.Kavikanna
for R1 to R3

R4 – set ex-parte

JUDGMENT

This appeal has been filed by the Insurance Company challenging the award passed by the Motor Accidents Claims Tribunal (Principal District Judge), Perambalur, in M.C.O.P.No.812 of 2018, dated 06.9.2022.

2.The case of the claimants is that the deceased Dasarathan was riding the two wheeler on 11.2.2018 near Indra Nagar and at about 0.15 hours, a cow suddenly crossed the road and the deceased in order to avoid hitting the cow applied break and he lost his balance and fell down in a ditch. He sustained grievous injuries and he succumbed to the injuries. It is under these circumstances, the claimants who are the wife, minor children and mother of the deceased filed claim petition under Section 163 A of the Motor Vehicles Act, 1988, seeking for payment of compensation.

3.The Tribunal on considering the facts and circumstances of the case and on appreciation of oral and documentary evidence came to a conclusion that the deceased was not the owner of the vehicle and that he had borrowed



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the vehicle from the 4th respondent herein. The Tribunal proceeded to fix the compensation at Rs.1,00,000/- and directed this compensation to be paid with interest at the rate of 7.5% p.a.

4.The Insurance Company aggrieved by the award passed by the Tribunal has filed the present appeal before this Court.

5. Heard Mr.D.Bhaskaran, learned counsel for the appellant Insurance Company and Mr.Kavikanna, learned counsel for R1 to R3.

6.This Court has carefully considered the submissions made on either side and the materials available on record. This Court has also carefully gone through the award passed by the Tribunal.

7.The case in hand clearly falls within the scope of a personal accident coverage. That apart, it is admitted that the deceased was not the registered owner of the vehicle and he only borrowed the vehicle. Even if the claim is brought within the scope of Section 147 of the Motor Vehicles Act, 1988, the claimants will not be able to satisfy the requirements under the said provision since the deceased was the borrower of the vehicle. It is also brought to the notice of this Court that the deceased did not possess a valid driving license which is also a violation of the provision of the Act.



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8.The issue that is involved in the present case is no longer *res integra* and it is covered by the judgment of the Apex Court in **Ramkhaladi and Another v. The United India Insurance Company and Another** reported in **2020 1 TANMAC 1**. This judgment was also followed by our Court in **National Insurance Company .vs. Rani and Others** reported in **2020(2) CTC 703**.

9.The Tribunal lost sight of the settled position of law and seems to have been swayed by sympathy. The award passed by the Tribunal cannot be sustained and accordingly the same is hereby set aside.

10.In the result, this Civil Miscellaneous Appeal is allowed and the award by the Motor Accident Claims Tribunal (Principal District Judge), Perambalur, in M.C.O.P.No.812 of 2018, dated 06.09.2022, is hereby set aside. If the appellant insurance company has deposited any amount, it will be left open to the appellant insurance company to withdraw the same with accrued interest. No Costs. Consequently, connected miscellaneous petition is closed.

20.06.2024

Index :Yes/No
Neutral citation: Yes/No
Speaking Judgment/Non-speaking Judgment
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To

Motor Accident Claims Tribunal
(Principal District Judge)
Perambalur.



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N.ANAND VENKATESH, J.

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