



C.M.A.No.1029 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Reserved on 10.01.2024	Pronounced on 31.01.2024
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THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.1029 of 2020
and
C.M.P.No.6524 of 2020

United India Insurance Co. Ltd.,
Aurobindo Road, Block 19,
Neyveli Township, Cuddalore District,
by its Divisional Manager

... Appellant

Vs.

1.Malarkodi, 48 years
W/o.Vijayaraj

2.Divya, 25 years
D/o.Vijayaraj

3.Arunkumar, 23 years
S/o.Vijayaraj

4.Velammal, 72 years
W/o.Narayanasamy,
All are residing at Gangaikondan
Mandarakupam, Neyveli 2
Vriddhachalam Taluk.

... Respondents



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Prayer: Appeal filed under Section 173 of Motor Vehicles Act, 1988 against award and Decree dated 29.08.2016 made in MCOP.No.35 of 2015 on the file of the Motor Accident Claims Tribunal, Subordinate Judge, Neyveli.

For Appellant : Mr.S.Arun Kumar

For Respondents : No appearance

J U D G M E N T

The Appeal has been filed against award and Decree dated 29.08.2016 made in MCOP.No.35 of 2015 on the file of the Motor Accident Claims Tribunal, Subordinate Judge, Neyveli.

2.For the sake of convenience, the parties are referred to as per their ranking before the trial Court.

3.The Insurance Company is the Appellant herein. The Appellant challenged the award passed by the Subordinate Judge, Neyveli in MCOP.No.35 of 2015 dated 29.08.2016 on the ground that owner of the vehicle cannot claim compensation against his own vehicle and he is a tortfeasor and without involvement of third party vehicle the accident has taken place.



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4.The claim Petitioners 1 to 3 have filed claim Petition seeking compensation for the death of the one Vijayaraj (husband of the 1st claimant/1st Petitioner/1st Respondent) in a road transport accident, which taken place on 07.09.2014.

5.It is the case of the Petitioners that on 07.09.2014 at about 6.00 am, the deceased Vijayaraj was riding his motor cycle on the left side road bearing Reg. No.TN 31 AP 9545, in Yamaha YBR vehicle from Mandarakuppam to Neyveli Township Main Road near Gangaikondan Bus Stop from South to North direction and at that time, the pedestrian was suddenly crossed the road without any signal since the deceased tried to avoid major accident suddenly applied the break and turned up the motor vehicle and due to which he lost his control and the vehicle was fall down from the road to big canal in the mud portion on the left side of the road and caused the accident. Due to the accident the deceased sustained fatal injuries, so as the evidence of PW1.

6.Learned counsel for the Insurance Company would submit that no third



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party vehicle is involved in the accident, the deceased suddenly applied the break and thereby lost the balance, fell down, sustained injuries and died subsequently. Therefore, the owner of the vehicle cannot claim against his own insurance company. He further draw my attention to Ex.P.3/Insurance policy, wherein it is found that no additional premium was paid for covering personal accident.

7.During the trial, on the side of the claim Petitioners, PW1 to PW3 were examined, Ex.P1 to Ex.P.10 were marked and on the side of the Respondents, none was examined and no document was marked.

8.Heard the learned counsel for the Insurance Company and perused the available records.

9.The manner of the accident narrated by the occurrence witness PW2 goes to show that no third party vehicle is involved in the accident. As per the pleadings in the claim Petition and the oral evidence of PW2, the deceased Vijayaraj is the owner of the Yamaha YBR vehicle bearing Reg.No.TN 31 AP 9545, when one pedestrian was suddenly crossed the road, without noticing the



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signal, in order to avoid dashing against the pedestrian, who is crossing the road, the deceased applied the break suddenly, lost the balance, fell down and sustained fatal injuries and died. The deceased is the owner of the vehicle and also insured.

10.It is settled law that the owner of the vehicle, who is also the deceased cannot claim compensation against his own insurance company. The owner of the vehicle, who is a tortfeasor cannot claim compensation under the Motor Vehicles Act. He is entitled only for Rs.1,00,000/- under the Personal Accident coverage, if he has remitted additional premium in the policy.

11.This Court perused Ex.P.3/copy of Insurance policy of the deceased vehicle, the same reveals that no additional premium towards personal coverage was paid. In the absence of any premium paid for personal accident coverage, the insured is not entitled for any such claim as claimed by the claim Petitioners. The premium was paid only for own damage and for third parties. Hence, the claim Petitioners are not entitle for any compensation. This Court has no other option except to allow this Appeal.



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12.In fine, this Appeal is allowed. Award and Decree passed by the Subordinate Judge, Neyveli in MCOP.No.35 of 2015 dated 29.08.2016 is hereby set aside and consequently, MCOP.No.35 of 2015 on the file of the Motor Accident Claims Tribunal, Subordinate Judge, Neyveli stands dismissed. Connected Miscellaneous Petition in CMP.No.6524 of 2020 is closed. No costs.

13.The Insurance Company is permitted to withdraw the amount already deposited before the Tribunal, if any, with accrued interest.

31.01.2024

Index : Yes/No
Neutral citation : Yes/No
Speaking Order/Non-Speaking Order
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To
The Subordinate Judge
Motor Accident Claims Tribunal
Neyveli



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RMT.TEEKAA RAMAN.J,

sai

Pre-delivery Judgment made in

C.M.A.No.1029 of 2020

and

C.M.P.No.6524 of 2020

Dated: 31.01.2024