BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.11.2024

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

W.P.(MD)No.6447 of 2023

N.Annamalai ...Petitioner

-Vs-

1.The United Insurance Company,
Represented by its General Manager,
No.24, Whites Road,
Chennai - 600 0014.

2.The United Insurance Company,
Authorized Signatory,
No.11, Ponnagaram,
Dindigul Road, Micro Office,
Manapparai - 621 306. ...Respondents

Prayer : Writ Petition filed under Article 226 of Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order of the 2nd respondent in ref No. 091384/Motor/2023, dated 02.02.2023, quash the same and consequently direct the respondents to disburse a sum of Rs.15,00,000/- to the petitioner with 9% interest Per Annum payable from the 27.08.2021 to till the date on which the said benefits were settled to him under the Personal Accident Coverage applicable for Motor Vehicle Policy No.0913843120P113813030 issued by the 2nd respondent.

For Petitioner : Mr.K.K.Udayakumar
for M/s.A.Rahul

For Respondents : Mr.C.Karthick
Standing Counsel

ORDER

This writ petition has been filed challenging the order passed by the second respondent dated 02.02.2023, thereby rejected the claim made by the petitioner under Personal Accident Coverage for the death of his son in the motor vehicle accident under the Personal Accident Coverage Policy No. 091384312OP113813030.

2.The petitioner has owned a two wheeler bearing Registration No.TN-AW-8331 and it has been registered in the name of the petitioner. The vehicle has been insured with the second respondent including a personal accident claim under the policy No.091384312OP113813030. While being so, the petitioner has taken the vehicle to grocery shop to purchase groceries. While the petitioner's son was returned to home from south to north on the Rajalipatti Ellaikkalpatti Road, he fell into un-baricaded bit that had been dug for the purpose of bridge construction and sustained grievous injuries. Unfortunately, he succumbed to the injuries on 27.08.2021. Immediately his death was reported to the Inspector of Police, Viralimalai Police Station, Pudukottai and the same was registered in Crime No.459 of 2021 for the offences punishable under Section 304(A) of IPC.

3.The postmortem report reveals that the deceased died due to injury sustained during the road travel accident due to RTA/Hypovolemic shock and multiple organ injury. The policy is valid from 27.02.2021 to 26.02.2022. The petitioner has also paid additional payment of Rs.275/- per annum for Personal Accident Coverage. As per the premium under the Personal Accident Coverage, a sum of Rs.15,00,000/- can be claimed, if the rider of the two wheeler died during operation of the vehicle. Accordingly, the petitioner has made a claim for the demise of his son under the Personal Accident Coverage to the tune of Rs.15,00,000/- on 19.08.2022 before the second respondent.

4.This Court in W.P(MD)No.20970 of 2021, dated 03.01.2023 ordered compensation of Rs.50,00,000/-. However, compensation under the Personal Accident Coverage was rejected by the second respondent by its communication dated 02.02.2023, on the ground that the policy does not cover to the petitioner's son.

5.The learned Counsel appearing for the writ petitioner submits that the premium was duly paid for the Personal Accident Coverage. It does not mean that the owner or the policy holder is entitled to claim under the Personal Accident Coverage. A person who had borrowed the vehicle of another, steps into the shoes of the owner of the vehicle and as such, he would be entitled to the limited liability under the Personal Accident Cover. He also relied upon the Judgment of the Hon'ble Supreme Court in the case of ***Ramkhiladi and another Vs. United India Insurance Company and another*** reported in ***2020 (2) SCC 550.***

6.Per contra, the learned standing Counsel appearing for the respondents submits that the policy is covered under the Personal Accident Coverage subject to a) the owner-driver of the registered owner of the vehicle insured herein; b) the owner-driver is the insured named in this policy; and c) the owner-driver holds an effective driving licence, in accordance with the provisions of Rule 3 of the Central Motor Vehicles Rules, 1989, at the time of the accident. Accordingly, the compulsory PA for owner-driver is applicable only for the registered owner of the vehicle.

7.Admittedly, the petitioner's son rode the vehicle and he himself fell down and died. His son is not the registered owner of the vehicle, which was insured with the second respondent. Therefore, the claim of the petitioner was rightly rejected, since the petitioner's son is not the registered owner of the two wheeler and also the insurance policy was taken in the name of the owner of the vehicle, namely, the petitioner herein.

8.A perusal of the judgment of the Hon'ble Supreme Court in Civil Appeal No.9393 of 2019 in the case of ***Ramkhiladi and another Vs. The United India Insurance Company and Another, dated 07.01.2020***. The Hon'ble Supreme Court has dealt with the issue relating in the case where the driver, owner and the Insurance Company of another vehicle involved in an accident and whose driver was negligent are not joined as parties to the claim petition, meaning thereby that no claim petition is filed against them and the claim petition is filed only against the owner and the insurance company of another vehicle which was driven by the deceased himself and the deceased being in the shoes of the owner of the vehicle by himself, whether the insurance company of the vehicle driven by the deceased himself would be liable to pay the compensation under Section 163 of the Motor Vehicles Act.

9.While deciding the said issue, the Hon'ble Supreme Court has held that even as per contract of insurance, in case of personal Accident, the owner cum driver is entitled to the sum assured. Therefore, being the insurer of the owner who is being entitled for the sum assured under the Personal Accident Coverage, even as per contract of insurance. The claimant would be entitled for compensation as per premium of the contract of insurance, the driver being insured of the owner of the vehicle.

10.In the case on hand, admittedly, the petitioner has owned the two wheeler and insured with the second respondent including the Personal Accident Coverage. The petitioner has paid additional amount of Rs.275/- per annum for Personal Accident Coverage to the tune of Rs.15,00,000/-. The said premium was paid under the head of Compulsory Personal Accident Coverage for owner cum driver. It means the owner of the vehicle as well as the driver of the vehicle. Therefore, the Personal Accident Coverage is not only for the owner as well as the driver of the vehicle. When the third person other than the owner of the vehicle drives the vehicle, he would be under the insured to the owner. Therefore, he is also entitled for the claim under the Personal Accident Coverage even as per contract of insurance.

11.When the deceased is being the son of the owner of the vehicle, namely, the petitioner herein, steps into the shoes of the owner of the vehicle and as such, he is entitled to claim the limited liability under the Personal Accident Coverage. Therefore, the borrower of the vehicle from it's owner or any other permitted user of the vehicle can also be covered under the Personal Accident Coverage.

12.In view of the above, this Court finds no illegality or infirmity in the order passed by the second respondent and is liable to quashed. The respondents are directed to disburse a sum of Rs.15,00,000/- to the petitioner with 6% interest per annum from the date of claim made by the petitioner till the payment within a period of four weeks from the date of receipt of a copy of this order under the Personal Accident Coverage policy No. 0913843120P113813030.

13.With the above said directions, this writ petition stands allowed. No costs.

29.11.2024

NCC : Yes/No
Index : Yes/No
Internet: Yes/No
RJR

G.K.ILANTHIRAIYAN. J,

RJR

To

1.The General Manager,
The United Insurance Company,
No.24, Whites Road,
Chennai – 600 0014.

2.The United Insurance Company,
Authorized Signatory,
No.11, Ponnagaram,
Dindigul Road, Micro Office,
Manapparai – 621 306.

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