BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 21.12.2023

Pronounced on : 20.03.2024

CORAM:

THE HONOURABLE MR.JUSTICE P.VADAMALAI

C.M.A.(MD)No.633 of 2021
and
C.M.P(MD)No.6109 of 2021

M/s.Reliance General Insurance Company Ltd.,
2nd Floor, PLA Kanagu Towers,
15-A, Thillainagar Main Road,
11th Cross Street, Trichy – 18. ...Appellant/Respondent

Vs.

1.Sadique Batcha
2.Saithani Bee ... Respondents/Petitioners

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, to set aside the judgment and decree dated 03.03.2021 passed in M.C.O.P.No.369 of 2017 on the file of the Motor Accident Claims Tribunal/Special District Judge, Trichirapalli.

For Appellant : Mr.V.Sakthivel

For Respondents : No Appearance

JUDGMENT

This Civil Miscellaneous Appeal is filed challenging the award dated 03.03.2021 passed in M.C.O.P.No.369 of 2017 by the Motor Accident Claims Tribunal/Special District Judge, Tiruchirappalli.

2.The respondent/Insurance Company in M.C.O.P.No.369 of 2017 is the appellant herein.

3.The petitioners/claimants are the dependents of the deceased Sadam Hussain, who died in a road traffic accident.

4. For the sake of convenience, the parties arrayed in M.C.O.P.No. 369 of 2017 is adopted hereunder.

5. **The brief facts of the case:**

On 14.07.2016, the deceased Sadam Hussain was riding his motorcycle bearing registration No.TN 45 BJ 1468 along Tiruchi – Vayaloor road by following the traffic rules and while he was coming from west to east near Anantha Mariyamman temple, he had to apply sudden brake due to unavoidable circumstances, thereby, vehicle lost control and hit against the signal post. Due to impact, he sustained fatal multiple injuries and he was admitted in the Government Hospital, Tiruchi. But, he died on the same day in spite of treatment. At the time of accident, the deceased was 22 years and was earning Rs.10,000/- p.m. The petitioners, who are parents of the deceased, filed the claim petition seeking compensation of Rs.10,00,000/-.

6. The respondent/Insurance Company objected the claim petition by contending that the accident was taken place due to rash and negligent driving of the deceased himself. The deceased is the owner of the vehicle, who himself invited the accident and he is the tortfeasor. The deceased was not having valid driving license at the time of accident and there was no valid permit to the vehicle. Moreover, the vehicle was not insured with the respondent/Insurance Company. The petitioners are not entitled to any claim from the respondent.

7. The Tribunal has tried the M.C.O.P.No.369 of 2017 and both side adduced oral and documentary evidence. After hearing both and considering the evidence, the Tribunal passed the impugned award and awarded a total compensation of Rs.1,00,000/- with interest. Aggrieved by the said award, the respondent/Insurance Company preferred this Civil Miscellaneous Appeal.

8.Heard the learned counsel for the appellant/respondent/Insurance Company and perused the records in this Civil Miscellaneous Appeal.

9. The learned counsel for the appellant/respondent/Insurance Company has submitted that the deceased was the owner and rider of the two wheeler bearing registration No.TN 45 BJ 1468. Though the petition was initially filed under Section 166 of the MV Act, later it was converted into Section 163A of the MV Act. The accident took place due to rash and negligent driving of the deceased and F.I.R. was also registered against the deceased alone. So, the petition is not maintainable. It is specifically contended that the deceased was not possessing valid driving license and valid permit to the vehicle. Moreover, the vehicle was not insured with the respondent. The petitioners failed to produce driving license of the deceased. But, R.W.1. who is R.T.O, was examined by the respondent/Insurance Company. R.W.1 clearly deposed that the deceased was not having driving license at the time of accident. The Tribunal awarded Rs.1,00,000/- as Personal Accident Coverage. The Tribunal failed to consider the fact that the deceased did not have valid driving license at the time of accident. The respondent/Insurance Company clearly proved this fact. It is held by the Hon’ble Supreme Court that in the absence of driving license, the

Insurance Company is not liable to pay any compensation. In support of this argument, the learned counsel for the respondent/Insurance Company/appellant herein has relied on the following judgments rendered by this Court.

1. **Judgment dated 22.06.2023 passed in C.M.A(MD) No.359 of 2023 (Umarsherif and anr /v/ Suganya and Reliance General Insurance Company Ltd.,)**

2. **Judgment dated 10.04.2023 passed in C.M.A(MD)No.664 of 2020 (Raju Thevar and Ors. /v/ Karthikeyan and IFFCO Tokyo General Insurance Company Ltd.,)**

3. **Judgment dated 27.03.2023 passed in C.M.A(MD)No.195 of 2017 (The Oriental Insurance Company /v/ Tamilarasi and Ors.)**

4. **Judgment dated 06.06.2023 passed in C.M.A(MD)No.883 of 2017 (Reliance General Insurance Company Ltd /v/ Marikannu and Ors.)**

5. **Judgment dated 15.09.2020 passed in C.M.A(MD)No.1251of 2016 (United India Insurance Company Ltd /v/ Rajini and Ors.)**

In the above citations, this Court already held as follows:

"…..the owner cannot seek any compensation from his own insurance company either under section 166 or under section 163A of the Motor Vehicles Act."

".....when the policy condition has been clearly violated and the deceased did not have a valid licence, the P.A coverage cannot be directed to be paid, as per the contract."

".....In view of the judgment of our High Court, the owner/borrower of the vehicle who is not holding a valid driving license at the time of accident, will not be entitled to invoke personal accident policy also."

10. Considered the arguments of appellant side and perused records of the case. There is no dispute that the accident was taken place due to the riding of the deceased Sadam Hussain as seen from Ex.P.1 - F.I.R. It is the specific case of the respondent/Insurance Company that since the deceased, who was the owner of the vehicle, did not have any valid driving license at the time of accident, the Insurance Company is not liable to pay any compensation and even compensation under Personal Accident Coverage. On perusal of records, the petitioners, who are parents of the deceased, have not established that their deceased son had a driving license at the time of accident and also the vehicle was insured with the Insurance Company. For awarding compensation under Personal Accident Coverage, certain policy

principles should be followed, particularly the driver had to possess valid driving license. The citations relied on by the respondent/Insurance Company has insisted the settled principle that the Insurance Company is not liable to pay any compensation if the driver/owner was not having valid driving license at the time of accident. The burden of proof shifted upon the petitioners to substantiate that their deceased son was having valid driving license at the time of accident. The petitioners failed to substantiate the same.

11. In this case, the respondent/Insurance Company has examined the staff of the concerned R.T.O. as R.W.1. Moreover, R.W.2 was examined by the respondent/Insurance Company who clearly deposed that the deceased was not possessing valid driving licence. Therefore, as rightly contended by the appellant/respondent and in view of the judgments of this Court relied on by the appellant side, that the owner/borrower of the vehicle who is not holding a valid driving license at the time of accident, will not be entitled to invoke personal accident policy also. Thus, the Tribunal has miserably failed to properly apply the above legal principle settled by the Hon’ble Supreme Court and by this Court. Therefore, the award passed by the Tribunal warrants interference and the Civil Miscellaneous Appeal has to be allowed.

12. In the result,

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

(ii) The judgment and decree dated 03.03.2021 passed in M.C.O.P. No.369 of 2017 by the Motor Accident Claims Tribunal/Special District Court, Tiruchirappalli is set aside. The M.C.O.P.No.369 of 2017 on the file of the Motor Accident Claims Tribunal/Special District Court, Tiruchirappalli is dismissed.

(iii) If any amount deposited by the appellant/Insurance Company in this case either before Tribunal or before this Court, the same shall be ordered to be withdrawn by the appellant/Insurance Company on appropriate application.

(iv) Consequently, connected Miscellaneous Petition is closed.

20.03.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
VSD

To

1.The Motor Accident Claims Tribunal/
Special District Judge, Trichirapalli.

2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

P.VADAMALAI, J.

VSD

Pre - Delivery Judgment made in
C.M.A.(MD)No.633 of 2021
and
C.M.P(MD)No.6109 of 2021

20.03.2024