BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **24.06.2024**

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THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.430 of 2020
and
C.M.P(MD)No.5130 of 2020

Bajaj Allianz General Insurance Company Ltd.,
Branch Office,
Tiruchirappalli. ... Appellant/2nd Respondent

Vs.

1.R.M.Krishnaveni

2.Minor.R.M.Keerthana ... Respondents/Petitioners 1&2

(Represented by her mother, next friend and natural guardian R1)

3.M.Durai ... Respondent/1st Respondent

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act,1988, to set aside the judgment and decree passed in M.C.O.P.No.329 of 2010 on the file of the Motor Accident Claims Tribunal (II Additional District Judge), Tiruchirapalli, dated 27.02.2020.

For Appellant : Mrs.K.R.Shivashankari

For R1 : Mr.B.Jameelarasu

For R3 : No appearance

JUDGMENT

The present appeal has been filed by the insurance company challenging an award passed in M.C.O.P.No.329 of 2010 on the file of Motor Accident Claims Tribunal / II Additional District Court, Tiruchirappalli primarily on the ground of liability.

2. It is the contention of the claimants that the deceased was travelling as a pillion rider in a two wheeler owned and driven by the 1st respondent in the claim petition and insured with the 2nd respondent. According to the claimants, the deceased was 32 years old and he is working as a Ironing Master in a textile factory at Tirupur. He was earning a sum of Rs.10,000/- per month. The claimants have contended that at about 12.00 p.m on 13.03.2009, when the deceased was travelling as a pillion rider, the 1st respondent had driven the vehicle in a rash and negligent manner and lost control of the vehicle. The deceased had fallen down and sustained grievous injuries and passed away in the hospital. The claimants have prayed for a compensation of Rs.5,00,000/-.

3. The 2nd respondent insurance company has filed a counter contending that an F.I.R has been registered as against the 1st respondent

and the deceased person on the ground that they were involved in a chain snatching incident using the bike for unlawful activity. Therefore, they are not liable to pay any compensation. In fact where they attempted to escape from the scene of occurrence, the vehicle was driven in a rash and negligent manner and in the said course, the accident has taken place. The insurance company has also questioned the quantum of compensation prayed for by the claimants.

4. On the side of the claimants, a copy of an F.I.R, postmortem report and legal heir certificate were marked as Exhibits P.1 to P.3. The claimant was examined as P.W.1. One Mahendran who is an ocular evidence was examined as P.W.2. On the side of the respondents, the Deputy Superintendent of Police was examined as R.W.1 and Senior Legal Officer of the insurance company was examined as R.W.2 and the insurance policy was marked as Exhibit R.1. The documents produced on the side of the witnesses were marked as Exhibits X.1 and X.2 which are 2 F.I.R copies relating to the chain snatching incident and the accident.

5. The tribunal after considering the oral and documentary evidence adduced on either parties, arrived at a finding that the insurance

company was not able to establish that the vehicle was involved in carrying out illegal activity, namely chain snatching. The tribunal proceeded to fix the notional income of the deceased person at Rs.6,500/- per month and proceeded to award a total compensation of Rs. 12,34,864/-. This award is under challenge in the present appeal.

6. According to the learned counsel appearing for the appellant, on the date of accident, 2 F.I.Rs were registered. F.I.R in Crime No.118 of 2009 was filed against the chain snatching incident, in which, the deceased as well as the 1st respondent herein were arrayed as accused. F.I.R in Crime No.119 of 2009 was registered touching upon the accident.

7. The learned counsel appearing for the appellant further contended that the Deputy Superintendent of police has been examined as R.W.1 and he had clearly deposed that the deceased and the 1st respondent are involved in the chain snatching incident and only when they were attempting to escape from the scene of occurrence, the vehicle was driven in a rash and negligent manner which had resulted in the accident. According to the learned counsel appearing for the appellant,

when the vehicle was used for illegal activities, the exclusion clause found in the insurance policy will come into operation and the insurance company is not liable to pay any compensation.

8. Per contra, the learned counsel appearing for the claimants had contended that the 1st respondent herein was arrayed as one of the co-accused along with deceased in Crime No.118 of 2009, was already acquitted by the Criminal Court. Therefore, the contention of the learned counsel appearing for the insurance company that the vehicle was used for illegal activity has not been proved. Apart from the F.I.R in Crime No.118 of 2009, nothing has been produced by the insurance company to establish the fact that the vehicle was used for illegal activity. In fact, when the deceased was travelling as a pillion rider which was driven by the 1st respondent in a rash and negligent manner, the accident has been taken place. Exhibit R.1 policy being a comprehensive policy, it covers the pillion rider also. Hence, he prayed for sustaining the award passed by the tribunal.

9. I have carefully considered the submissions made on either side and perused the material records.

10. The primary contention of the learned counsel appearing for the appellant insurance company is that, the vehicle having been used for the illegal activity, that is for chain snatching, the company is exempted from payment of any compensation in view of the exclusion clause found in the policy. The insurance policy relating to the vehicle has been marked as Exhibit R.1. A perusal of the policy indicates that it is a Package Policy covering the pillion rider also. A perusal of the policy further indicates that it excludes hire or reward, carriage of goods, organized racing, pace making, speed testing, reliability trials and any purpose in connection with motor trade. Therefore, it is clear that, in the limitation clause incorporated in the policy, there is no clause relating to usage of the vehicle for illegal purposes.

11. The learned counsel appearing for the respondent claimants had relied upon the judgment of our High Court reported in ***2019 (2) SCC 671 (New Indian Assurance Co. Ltd., Vs. Rajeshwar Sharma & Others)*** and the judgment in ***Civil Appeal No.1496 of 2023 (United India Insurance Co. Ltd Vs. M/s. Hyundai Engineering & Construction Co. Ltd & Others)*** dated 16.05.2024 to the effect that the exclusion clauses found in the insurance contracts have to be interpreted strictly and against the insurer. In the present case, there is no such

exclusion clause which excludes the liability of the insurance company from payment of compensation when the vehicle is used for any illegal activities. In the present case, the fact that the vehicle was used for any illegal activity itself has not been established before the Court. In view of the admitted fact that the owner of the vehicle namely the 1st respondent in the claim petition has already been acquitted by the Criminal Court, there are no records to establish that the pillion rider of the vehicle, namely the deceased person was also involved in the said crime. In such circumstances, the tribunal was right in mulcting the liability upon the insurance company for payment of compensation.

12. A perusal of the award further indicates that for an accident that has taken place in the year 2009, the notional monthly income has been fixed only at Rs.6,500/- per month. This Court does not find the award of compensation under the other heads in any way excessive. In such circumstances, there are no merits in the appeal. Hence, this Civil Miscellaneous Appeal stands dismissed. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

24.06.2024

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

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To

1.The Motor Accident Claims Tribunal
(II Additional District Judge),
Tiruchirapalli.

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

R.VIJAYAKUMAR,J.

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Order made in
C.M.A(MD)No.430 of 2020

24.06.2024