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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **05.02.2024**

CORAM

THE HON'BLE MRS.JUSTICE S.SRIMATHY

C.M.A(MD)No.38 of 2022
and
C.M.P.(MD)No.369 of 2022

Royal Sundaram Allianz
Insurance Co. Ltd.,
Through its Branch Manager
Vishranthi Melaram Towers
No.2/319, Gandhi Salai (OMR)
Karapakkam, Chennai – 600 097. ... Appellant/
2nd Respondent

Vs

1. T. Thavethu,
2. T. Thangakani,
3. J. Jeba Sharon,
4. J. Jeba Sherin,
5. D.C. Joy Winnie Wise ... Respondents/
Petitioner

PRAYER: Civil Miscellaneous Appeals are filed under Section 173 (1) of the Motor Vehicles Act 1988, against the order, dated 22.03.2021, passed in M.C.O.P.No.1493 of 2015 on the file of the Motor Accident Claims Tribunal (Special Sub Court), Tirunelveli.

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For Appellant : Mr.S.Srivasa Raghavan
For R1 to R4 : Mr.T.Selvakumaran
For R5 : No appearance

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JUDGEMENT

The Insurance Company has preferred this appeal against the award passed by the Tribunal.

2. It is the case of fatal. The contention of the Insurance Company is that the deceased is a third party. The deceased has borrowed the vehicle and has committed accident. Hence, the deceased is not entitled to compensation. The Learned Counsel had relied on the judgment of this Court rendered in the case of ***Royal Sundaram Alliance Insurance Co.Ltd., Vs Gangadevi reported in 2012(2) TNMAC 388*** wherein it has held that the Insurance Company is not liable to pay the compensation for own injury and to a third party unless the owner is held liable.

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3. But the Hon'ble Supreme Court in the case of ***Ramkhiladi Vs The United India Insurance Co Ltd reported in 2020(1) TNMAC 1(SC) Vol.I*** has held that the Insurance Company is liable to pay the compensation even though the deceased is a third party, it has to be treated as the owner of the vehicle since he had stepped into the shoes of the owner of the vehicle. The relevant portion is extracted hereunder:

> *"5.8 However, at the same time, even as per the Contract of Insurance, in case of personal accident of the Owner Driver is entitled to a sum of Rs.1 Lakh. Therefore, the deceased, as observed hereinabove, who would be in the shoes of the owner shall be entitled to a sum of Rs.1 Lakh, even as per the Contract of Insurance. However, it is the case on behalf of the Original Claimants that there is an amendment to the 2nd Schedule and a fixed amount of Rs.5 Lakh has been specified in case of death and therefore, the claimants shall be entitled to Rs.5 Lakh. The same cannot be accepted. In the present case, the accident took place in the year 2006 and even the Judgment and Award was passed by the learned Tribunal in the year 2009, and the impugned Judgment and Order has been passed by the High Court in 10.05.2018, I.e much prior to the amendment in the 2nd Schedule. In the facts and circumstances of the present case, the claimants shall not be entitled to the benefit of the amendment to the 2nd Schedule. At the same time, as observed hereinabove, the claimants shall be entitled to R.1 Lakh as per the terms of the Contract of Insurance, the Driver being in the shoes of the owner of the vehicle."*

4. It is seen that the Tribunal has followed ***Ramkhiladi's*** case judgment and granted the relief. Therefore, following the said judgment,

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the contention of the Insurance Company rejected. In the present case the deceased person had borrowed the vehicle and would step into the shoes of the owner of the vehicle and the same ought to be considered as personal accident claim. By considering the same, the Tribunal has rightly awarded Rs.2,00,000/- under personal accident claim.

5. The next contention of the Insurance Company is that the claimant is not entitled to any interest, if it is coming under personal accident claim. This contention of the Insurance Company cannot be accepted. When the Insurance Company is treating this accident as personal claim accident, then the Insurance Company ought to have discharged its liability either by depositing the amount or by disbursing the amount. When the Insurance Company has not discharged its liability, then the same carries interest. This Court is of the considered opinion that the claimant is entitled to interest.

6. Therefore, this Court is confirming the judgment passed by the Tribunal and also the claimant is entitled to interest at 7.5% per annum

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from 30.10.2015 to 22.03.2021. The Insurance Company has already deposited 50% of the award amount and the balance amount shall be paid along with interest at 7.5% per annum within a period of six months from the date of receipt of a copy of this order.

7. In view of the above, this Civil Miscellaneous Petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

05.02.2024

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

To

1.MACT (Special Sub-Court),
Tirunelveli.

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

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S.SRIMATHY, J.

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COMMON JUDGMENT made in
C.M.A(MD)No.38 of 2022

05.02.2024

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