BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **29.04.2024**

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.1176 of 2018
and
C.M.P(MD)No.12114 of 2018

M/s.United India Insurance Company Limited,
Having office at No.43/3,
S.K.T.M.Complex,
Ettaiyapuram Road,
Vilathikulam,
Tuticorin. ... Appellant/2nd Respondent

Vs.

1.S.Petchiammal ... 1st Respondent/1st Petitioner

2.Minor S.Kalaichelvi ... 2nd Respondent/2nd Petitioner

3.Minor S.Sugashini ... 3rd Respondent/3rd Petitioner

4.A.Solaiappan ... 4th Respondent/4th Petitioner

5.S.Parameswari ... 5th Respondent/5th Petitioner

(Minor 2nd and 3rd respondents represented through her mother and natural guardian the first respondent)

6.E.Balamurugan ... 6th Respondent/1st Respondent

(Respondent No.6 given up)

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicle Act, 1988, to set aside the order of the Tribunal of Motor Accident Claims Tribunal cum I Additional District Court, Tuticorin made in M.C.O.P.No.115 of 2015, dated 04.10.2017 and allow the appeal with costs.

For Appellant	: Mr.C.Jawahar Ravindran
For R-1 to R-5	: Mr.S.Sivathilakar
For R-6	: Mr.V.Chinnadurai

JUDGMENT

The instant appeal has been filed by the Insurance Company challenging the award in M.C.O.P.No.115 of 2015 on the file of the Motor Accident Claims Tribunal cum I Additional District Court, Tuticorin, primarily on the ground of liability.

2. According to the claim petition, the deceased had borrowed the two-wheeler belonging to the first respondent in the claim petition and insured with the second respondent and he had driven the said vehicle on 13.10.2014. According to the claimants, an un-known person had suddenly crossed the road which prompted the deceased to apply sudden brake. As a result, the deceased had fallen down from the bike, sustained head injury and succumbed to the said injuries. The claimants have prayed for a sum of Rs.30,00,000/- as compensation.

3. The Insurance Company has filed a counter contending that the deceased was a tort-feasor and therefore, they are not liable to pay any compensation.

4. The Tribunal after considering the evidence on either side, had arrived at a finding that the deceased had driven the vehicle in a rash and negligent manner and only due to his negligence, the said accident has taken place. However, proceeded to direct the second respondent Insurance Company to pay a compensation of Rs.4,55,000/- to the family of the deceased claimant. Challenging the said award, the present appeal has been filed by the Insurance Company.

5. According to the learned Counsel appearing for the appellant Insurance Company, the deceased had borrowed the vehicle from the first respondent in the claim petition and therefore, he enters into the shoes of the owner of the vehicle / insured person. He is the tort-feasor and no other offending vehicle was involved. Therefore, he cannot claim any compensation from his own Insurance Company. Hence, he prayed for exonerating the Insurance Company.

6. Per contra, the learned Counsel appearing for the respondent herein had contended that he is not the owner of the vehicle and therefore, he should be treated as a third party to the contract of insurance and the Insurance Company may be mulcted with the liability to pay compensation.

7. I have carefully considered the submissions made on either side and perused the materials available on record.

8. It is not in dispute that the deceased had borrowed the vehicle belonging to the first respondent in the claim petition and he had driven the vehicle in a rash and negligent manner which has resulted in the accident and due to the said impact, he had passed away. The Insurance policy of the said two-wheeler is marked as Exhibit R.1 which indicates that it is an act only policy and no premium has been paid for personal accident coverage.

9. The Hon'ble Supreme Court in a judgment reported in ***2020 (2) SCC 550 [Ramkhiladi and Another Vs. United India Insurance Company and Another],*** has held that a borrower / permissive user of the vehicle steps into the shoes of the owner and therefore, he cannot make a claim as against his owner or the insurer. Therefore, even a claim petition under Section 163-A is not maintainable. The judgment cited *supra* is squarely applicable to the facts of the present case.

10. In view of the above said deliberations, the award as against the appellant Insurance Company is set aside and the appeal stands allowed. There shall be no order as to costs. Consequently, connected Miscellaneous Petition stands closed.

29.04.2024

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

To

1.The Motor Accident Claims Tribunal cum
I Additional District Court,
Tuticorin.

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

R.VIJAYAKUMAR, J.

BTR

Judgment made in
C.M.A(MD)No.1176 of 2018

29.04.2024