BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.10.2024

CORAM

THE HON'BLE MR.JUSTICE SUNDER MOHAN

C.M.A.(MD) No.529 of 2018
and
C.M.P.(MD) No.6242 of 2018

Reliance General Insurance Company Ltd.,
1st Floor, Gee Jay Arcade,
141/71, T.V.Samy Road,
West R.S.Puram, Coimbatore 641 002. ... Appellant

Vs.

1.K.Rajeshwari
W/o.Kunjappan

2.K.Sutha
D/o.Kunjappan

3.K.Latha
D/o.Kunjappan

4.K.Rajkumar
S/o.Kunjappan

5.K.Kavitha
D/o.Kunjappan

6.A.Vellaiyan ... Respondents

Prayer:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 to set aside the fair and decreetal order dated 14.03.2018 made in M.C.O.P.No.2712 of 2013 on the file of the Motor Accident Claims Tribunal (Sessions Judge/Mahila Court/Special District Judge), Trichy.

For Appellant	: Mr.V.Sakthivel
For R1 to R5	: Mr.H.Arumugam
For R6	: No appearance

JUDGMENT

The instant appeal has been filed by the Insurance Company challenging the award of the Tribunal on liability.

2. The first to fifth respondents herein filed a claim petition before the Tribunal stating that on 22.01.2009, at about 5:00 p.m., while the deceased was riding a two-wheeler bearing Registration No.TN-46-C-1296, which belonged to the sixth respondent, along with one Radha Krishnan as a pillion rider, to collect money from one Paramasivam, a cow suddenly crossed the road from left to right and to avoid hitting the cow, the deceased swerved the two-wheeler to his right, went into a nearby ditch, and sustained fatal injuries.

3. The owner of the vehicle, namely, the sixth respondent herein, remained *ex parte* before the Tribunal.

4. The appellant, the Insurance Company, filed a counter stating that the deceased was the tortfeasor; that the claim made by the legal representatives of the deceased was not maintainable; and that in any case, the compensation claimed was excessive.

5. Before the Tribunal, the claimants examined two witnesses as P.W.1 and P.W.2 and marked Exs.P1 and P2, and the appellant examined two witnesses as R.W.1 and R.W.2 and marked Ex.R1. The letter of the RTO, Tiruchirappalli dated 19.01.2016 was marked as Ex.X1.

6. The Tribunal, after taking into consideration the oral and documentary evidence, held that the claim petition filed under Section 163(A) of the Motor Vehicles Act, 1988 was maintainable and awarded a total compensation of Rs.7,45,000/-.

7. The learned counsel for the appellant, Insurance Company, submitted that the deceased was the borrower of the vehicle, and since he

stepped into the shoes of the owner, the claim under Section 163(A) of the Motor Vehicles Act, 1988, was not maintainable; and that the claimants were not even entitled to the personal accident cover, as the deceased did not have a valid driving licence, and relied upon the Judgment of this Court in ***The Branch Manager, Oriental Insurance Company Limited*** *Vs.* ***Tamilarasi and others***, rendered on ***27.03.2023*** in ***C.M.A.(MD) No. 195 of 2017***, to support of his submission that where the deceased was a borrower and did not have a valid driving licence, his/her legal representatives are not entitled to the personal accident cover.

8. The learned counsel for the first to fifth respondents, per contra, submitted that the deceased was employed under the sixth respondent and hence the claim petition was maintainable and the award of the Tribunal has to be confirmed.

9. The notice sent to the sixth respondent was returned with an endorsement 'refused'. This Court is of the view that hence, the notice is deemed to have been served on the sixth respondent.

10. The only point for consideration in the instant appeal is whether the appellant is liable to pay any compensation.

11. Admittedly, no other vehicle was involved in the accident. The deceased fell off his two-wheeler when he took a sharp turn towards a ditch since a cow suddenly crossed the road. In the claim petition, it is stated that the deceased went along with a pillion rider to collect money from one Pramasivan, who owed money to the sixth respondent herein, the owner of the vehicle. However, in Ex.P1, the FIR lodged by P.W.2, the pillion rider, it is stated that they went to Trichy for purchasing dress materials. That apart, in the claim petition, the occupation of the deceased was shown as 'running a dairy unit and doing real estate business' and the name of the employer was simply shown as 'Agriculture Gardener', and but the sixth respondent was not referred to as his employer. Therefore, this Court is of the view that the deceased can only be construed as the borrower of the vehicle as there is no evidence to prove that he was employed under the sixth respondent. It is settled law that a claim petition filed by the legal representatives of a borrower of the vehicle, who has stepped into the shoes of the owner, would not be maintainable under Section 163(A) of the Motor Vehicles Act, 1988.

12. As regards the personal accident cover, it is seen that the appellant had established before the Tribunal that the deceased did not have a valid driving licence by examining R.W.1, the Junior Assistant of the Srirangam RTO office. R.W.1 has stated that no driving licence was issued to the deceased in his office. However, he has deposed that if the deceased had provided a different address, he could have obtained a driving licence from a different RTO office. It cannot be presumed that the deceased would have obtained a valid driving licence from some other RTO office. When the Insurance Company had examined R.W.1, the claimants ought to have produced the driving licence if the deceased had indeed possessed one. Therefore, this Court is of the view that the appellant had established before the Tribunal that the deceased did not have a valid driving licence.

13. This Court in ***Tamilarasi*** case (*supra*) relied upon by the learned counsel for the appellant, held that unless the owner/borrower of the vehicle is holding a valid driving licence, the question of invoking personal accident cover would not arise. This Court had relied upon an earlier Judgment of this Court in ***Divisional Manager, Oriental Insurance Company Limited, Vellore*** *Vs.* ***R.Damodharan and another***,

reported in ***2020 (1) TN MAC 646***, while taking that view. In view of the above, this Court is of the view that the award of the Tribunal is liable to be set aside and is accordingly set aside.

14. However, it is open to the first to fifth respondents/claimants to approach the appropriate forum for claiming personal accident cover if they are able to establish that the deceased had a valid driving licence.

15. It is reported by the learned counsel for the appellant that the appellant has deposited the entire compensation awarded by the Tribunal. Therefore, the appellant is permitted to withdraw the same together with interest accrued thereon by filing an application before the Tribunal.

16. In the result, this Civil Miscellaneous Appeal is allowed. No costs. Consequently, the connected Miscellaneous Petition is closed.

01.10.2024

Index: Yes/ No
Neutral Citation: Yes / No
Speaking Order/Non-Speaking Order

JEN

Copy To:

1.The Sessions Judge, Mahila Court,
(Special District Judge),
Motor Accident Claims Tribunal,
Trichy.

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

SUNDER MOHAN, J.

JEN

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