BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.06.2024

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.115 of 2017
and
C.M.P(MD) No.1209 of 2017

United India Insurance Company Limited,
23, EVR Road,
Trichy. ... Appellant/2nd Respondent

-vs-

1.Subbu Lakshmi

2. Viji

3. Naga Jothi

4. Selvi ... Respondents 1 to 4/Petitioners

5. Manikandan ... 5th Respondent/1st Respondent
(5th respondent herein/1st respondent/ owner remained *ex parte* before the Tribunal)

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicle Act, 1988, against the judgment and decree dated 15.09.2016, made in M.C.O.P.No.505 of 2013 on the file of the Motor Accident Claims Tribunal/ Special District Court, Tiruchirappalli.

For Appellant : Mr.B.Rajesh Saravanan
For Respondents : No appearance

J U D G M E N T

The present Civil Miscellaneous Appeal has been filed by the Insurance Company challenging the award passed in M.C.O.P.No.505 of 2013 on the file of the Motor Accident Claims Tribunal, Special District Court, Tiruchirappalli, primarily, on the ground of liability.

2. As per the claim petition, the deceased had borrowed a two wheeler from the first respondent. While he was driving the vehicle in a rash and negligent manner, he lost control and dashed against the divider iron rod on the road side. Due to the said impact, he had fell down and sustained grievous injuries and passed away. According to the claimants, he was a cashier in a TASMAC shop, and earning a sum of Rs.6,000/- per month. The claimants prayed for compensation of Rs.5,00,000/- (Rupees Five Lakhs only).

3. The Insurance Company had filed a counter contending that the deceased being a tortfeaser, is not entitled to receive compensation from their own Insurance Company, especially, when no other offending vehicle was involved.

4. The Tribunal, after considering the oral and documentary evidence, arrived at a finding that since the vehicle is insured with the appellant/ Insurance Company, the Insurance Company is liable to pay the compensation, even though, the accident has taken place only due to the rash and negligent driving on the part of the deceased person. Challenging the said award, the present appeal has been filed.

5. According to the learned counsel appearing for the appellant, the deceased had borrowed the vehicle from the fifth respondent herein/first respondent before the Tribunal, who is the owner and he had driven the vehicle in a rash and negligent manner and resulted in the accident. Therefore, the Insurance Company is not liable to pay any compensation.

6. Though the name of the respondents' counsel printed in the cause list, there is no representation.

7. I have carefully considered the submissions made by the learned counsel for the appellant and perused the materials available on record.

8. Even as per the claim petition, the accident has taken place only due to the rash and negligent driving on the part of the deceased person. The claimants have filed a petition under Section 163 – A of the Motor Vehicle Act, seeking compensation.

9. The judgment of the Hon'ble Supreme Court reported in ***2020 (1) TANMAC 1 SCC (Ramkhiladi and another -vs- The United India Insurance Company Limited and others)*** has held that the application filed under Section 163-A of the Motor Vehicle Act is not maintainable at the instance of the borrower of the vehicle, in view of the fact that he entered into the shoes of the owner of the vehicle. In view of the above said judgment, it is clear that the appellant/ Insurance Company is not liable to pay any compensation under Section 163 – A of the Motor Vehicle Act.

10. The Policy of the vehicle has been marked as Ex.R1. A perusal of the Policy indicates that premium has been paid towards Personal Accident Coverage. As per the policy, maximum a sum of Rs.1,00,000/- (Rupees One Lakh only) to be paid as Personal Accident Coverage to the deceased owner. Therefore, the appellant/ Insurance Company is liable to pay a sum of

Rs.1,00,000/- (Rupees One Lakh only) under the Personal Accident Coverage, if not under Section 163- A of the Motor Vehicle Act.

11. In view of the above said facts, the award of the Tribunal awarding a compensation of Rs.4,99,000/- (Rupees Four Lakhs and Ninety Nine Thousand only) is hereby set aside and the award is passed as against the appellant/Insurance Company to deposit a sum of Rs.1,00,000/- (Rupees One Lakh only) along with accrued interest and costs at the rate of 7.5% per annum from the date of filing of the claim petition. Excess amount, if any, deposited by the Insurance Company shall be refunded to them along with accrued interest and costs.

12. With the above said observation, this Civil Miscellaneous Appeal is partly allowed to the extent as stated above. There shall be no order as to costs. Consequently connected 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/
   Special District Court,
   Tiruchirappalli.

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

R.VIJAYAKUMAR,J.

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