BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.07.2024

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.812 of 2017
and
C.M.P(MD) No.8786 of 2017

The Divisional Manager,
United India Insurance Company Limited,
No.61/2694, First Floor (Indian Bank Upstairs)
South Main Street,
Thanjavur District. ... Appellant/ 2nd Respondent

-vs-

1. Mahalakshmi

2. Durga Devi ... Respondents 1 and 2/ Petitioners 1 and 2

3. A.Ramamoorthi ... 3rd Respondent/2nd Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, 1988, against the decree and judgment dated 20.04.2016 made in M.C.O.P.No.170 of 2015, on the file of the learned I Additional District and Sessions Judge (PCR), Thanjavur District.

For Appellant : Mr.A.Ilango

For Respondents : Mr.J.Muneer Khan – for R1 and R2
: No appearance – for R3

JUDGMENT

The present Civil Miscellaneous Appeal has been filed by the appellant/Insurance Company, challenging the award passed in M.C.O.P.No. 170 of 2015, on the file of the Motor Accident Claims Tribunal, I Additional District and Sessions Judge (PCR), Thanjavur District, primarily, on the ground of liability.

2. As per the claim petition, the deceased was driving a two wheeler owned by the first respondent and insured with the second respondent. While he was driving the vehicle, a dog had crossed the two wheeler and therefore, the deceased has lost his balance, fell down sustained injuries and later, passed away. The claimants have prayed for a compensation of Rs.9,00,000/- (Rupees Nine Lakhs only).

3. The owner of the vehicle had remained *ex parte*. The insurer of the vehicle had filed a counter contending that the deceased himself is the tortfeasor and hence, they are not liable to pay any compensation. They have further contended that the deceased was not having proper driving license to drive the two wheeler at the relevant point of time.

4. The Tribunal, after considering the oral and documentary evidence, has arrived at a finding that there was no negligence on the part of the rider of the two wheeler and the accident has taken place only due to the fact that a dog had suddenly crossed the two wheeler. The Tribunal further found that the deceased is to be treated as a third party and not as a representative of the owner of the vehicle. The Tribunal has proceeded to fix the compensation at Rs.8,48,952/- (Rupees Eight Lakhs Forty Eight Thousand Nine Hundred and Fifty Two only) along with interest at the rate of 9% per annum. This award is under challenge in the present appeal filed by the appellant/ Insurance Company.

5. According to the learned counsel appearing for the appellant, when the deceased himself is a tortfeasor and no other vehicle was involved in the accident, the question of payment of compensation from the insurer of the said vehicle would not arise. In fact, the deceased had borrowed the vehicle from the owner and therefore, the victim had entered into the shoes of the owner of the vehicle. He further contended that the rider of the two wheeler can never be consider to be a third party. He further contended that the Tribunal has erred in awarding interest 9% per annum for the award amount.

6. I have carefully considered the submissions made by the learned counsel on either side and perused the materials available on record.

7. From the pleadings in the claim petition, it is clear that the victim had borrowed the two wheeler from the first respondent in the claim petition. While he was driving a two wheeler, he had lost control, had fallen down and sustained injuries and later, passed away. Therefore, he can never be considered to be a third party to the policy of the insurance. He could only be considered to be borrower of the two wheeler from the owner of the vehicle. In such circumstances, the Tribunal was not right in holding that the rider of the two wheeler, namely, the deceased person is a third party to the contract of Insurance.

8. In such circumstances, the deceased being a tortfeasor himself would not be entitled to receive any compensation from their own Insurance Company. However, a perusal of the Policy produced by the learned counsel appearing for the appellant/Insurance Company would reveal that there is a Personal Accident Coverage for the owner cum driver to an extent of Rs.1,00,000/- (Rupees One Lakh only). Since the deceased had entered into the shoes of the owner of the vehicle, he is entitled to receive the said

compensation. The Tribunal was not right in fixing interest at 9% per annum for the award amount and the same is reduced to 7.5% per annum.

9. In view of the above said deliberations, the award of the Tribunal is set aside and the appellant/Insurance Company is directed to deposit a sum of Rs.1,00,000/- (Rupees One Lakh only) towards compensation along with interest at the rate of 7.5% per annum from the date of claim petition excluding the default period, if any. On such deposit being made, the claimants are entitled to withdraw the same by filing necessary petition before the Tribunal. Excess amount, if any, deposited by the Insurance Company shall be refunded to them along with accrued interest and costs.

10. Accordingly, this Civil Miscellaneous Appeal stands partly allowed to the extent as stated above. There shall be no order as to costs. Consequently connected Miscellaneous Petition stands closed.

29.07.2024

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

1. The I Additional District and Sessions Judge (PCR),
   Thanjavur District.

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

R.VIJAYAKUMAR,J.

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