BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 21.12.2023

Pronounced on : 20.03.2024

CORAM:

THE HONOURABLE MR.JUSTICE P.VADAMALAI

C.M.A.(MD)No.598 of 2023
and
C.M.P(MD)No.7702 of 2023

Iffco – Tokio General Insurance Company Ltd.,
Through its Athorized Signatory,
No.82, Preetham Complex,
Ground Floor and 1 Floor,
Chandra Kandhi Nagar,
Ponmeni, Madurai – 625 010. ...Appellant/Respondent No.2

Vs.

1.M.Girija

2.M.Nirosha ...1st & 2nd Respondents/Petitioners

3.B.Karnesan ...3rd Respondent/1st Respondent

(Cause title is accepted vide Court order, dated 03.01.2023 made in C.M.P(MD)No.65312 of 2022)

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, to set aside the judgment and decree dated 28.02.2022 passed in M.C.O.P.No.1909 of 2017 on the file of the District and Sessions Judge (Communal Clashes Judge/Motor Accident Claims Tribunal), Madurai by allowing this appeal.

For Appellant : Mr.V.Sakthivel
For Respondents : No Appearance

JUDGMENT

This Civil Miscellaneous Appeal is filed challenging the award dated 28.02.2022 passed in M.C.O.P.No.1909 of 2017 by the Motor Accident Claims Tribunal/District and Sessions Judge, Communal Clashes Cases Court, Madurai.

2. The 2nd respondent/Insurance Company in M.C.O.P.No.1909 of 2017 is the appellant herein.

3. The petitioners/claimants are the dependents of the deceased Manikandan, who died in a road traffic accident.

4. For the sake of convenience, the parties arrayed in M.C.O.P.No. 1909 of 2017 is adopted hereunder.

5. <u>The brief facts of the case:</u>

On 03.02.2017 at about 7.45 p.m. the deceased Manikandan along with pillion rider Muniyandi was riding the 1st respondent's motorcycle bearing registration No. TN 60 S 4434 along the Pulikuthi to Mela Chinthalacherry main road. While they were riding near Karuppasamy Kovil, a dog suddenly crossed the road, the deceased lost control, applied brake and fell down from the vehicle. Due to impact, he sustained fatal multiple injuries and he was brought to the Government Hospital, Uthamapalayam, where he was declared died. At the time of accident, the deceased was 50 years and was earning Rs.750/- per day by doing Mason work. The petitioners, who are wife and daughter of the deceased, filed the claim petition seeking compensation of Rs.15,00,000/-.

6. The 2nd respondent/Insurance Company objected the claim petition by contending that the accident was taken place due to rash and negligent driving of the deceased himself. The deceased was not having valid driving license at the time of accident, he himself invited the accident and he is the tortfeasor. There was no valid insurance. The petitioners are not entitled to any claim from the respondent.

7. The Tribunal has tried the M.C.O.P.No.1909 of 2017 and both side adduced oral and documentary evidence. After hearing both and considering the evidence, the Tribunal has passed the impugned award and awarded a total compensation of Rs.1,00,000/- with interest. Aggrieved by the said award, the 2nd respondent/Insurance Company preferred this Civil Miscellaneous Appeal.

8.Heard the learned counsel for the appellant/Insurance Company and perused the records in this Civil Miscellaneous Appeal.

9. The learned counsel for the appellant/Insurance Company has submitted that the deceased was riding the two wheeler bearing registration No.TN 60 S 4434 belonging to the 1st respondent. The accident was taken place due to rash and negligent riding of the deceased and F.I.R. was also registered against the deceased alone. So, the petition is not maintainable. It is specifically contended that the deceased was not possessing valid driving license. The petitioners failed to produce driving license of the deceased. But, R.W.1. clearly deposed that the deceased was not having driving license at the time of accident. Though the Tribunal held that the accident was taken place due to rash and negligent riding of the deceased and the Insurance Company is not liable to pay compensation, the Tribunal has awarded Rs.1,00,000/- as Personal Accident Coverage. The Tribunal failed to consider the fact that the deceased did not have valid driving license at the time of accident. The respondent/Insurance Company clearly proved this fact. It is held by the Hon’ble Supreme Court that in the absence of driving license, the Insurance Company is not liable to pay any compensation. In support of this argument, the learned counsel for the Insurance Company/appellant herein has relied on the following judgments rendered

by this Court.

1. Judgment dated 22.06.2023 passed in C.M.A(MD) No.359 of 2023 (Umarsherif and anr /v/ Suganya and Reliance General Insurance Company Ltd.,)

2. Judgment dated 10.04.2023 passed in C.M.A(MD)No.664 of 2020 (Raju Thevar and Ors. /v/ Karthikeyan and IFFCO Tokyo General Insurance Company Ltd.,)

3. Judgment dated 27.03.2023 passed in C.M.A(MD)No.195 of 2017 (The Oriental Insurance Company /v/ Tamilarasi and Ors.)

4. Judgment dated 06.06.2023 passed in C.M.A(MD)No.883 of 2017 (Reliance General Insurance Company Ltd /v/ Marikannu and Ors.)

5. Judgment dated 15.09.2020 passed in C.M.A(MD)No.1251of 2016 (United India Insurance Company Ltd /v/ Rajini and Ors.)

In the above citations, this Court already held as follows:

> ".....the owner cannot seek any compensation from his own insurance company either under section 166 or under section 163A of the Motor Vehicles Act."

> “.....when the policy condition has been clearly violated and the deceased did not have a valid licence, the P.A coverage cannot be directed to be paid, as per the contract.”
>
> “.....In view of the judgment of our High Court, the owner/borrower of the vehicle who is not holding a valid driving license at the time of accident, will not be entitled to invoke personal accident policy also.”

10. Considered the arguments of the learned counsel for the appellant and perused records of the case. There is no dispute that the accident was taken place due to the rash and negligent riding of the deceased Manikandan as seen from Ex.P.1 – F.I.R. It is the specific case of the 2nd respondent/Insurance Company that since the deceased, who was the owner of the vehicle, was not having any valid driving license at the time of accident, the Insurance Company is not liable to pay any compensation and even compensation under Personal Accident Coverage. On perusal of records, the petitioners have not established that their deceased son was having driving license at the time of accident. For awarding compensation under Personal Accident Coverage, certain policy principles should be followed, particularly the vehicle has to be insured and the driver had to possess valid driving license. The citations relied on by the appellant/Insurance Company insisted the settled principle that the

Insurance Company is not liable to pay any compensation if the driver/owner was not having valid driving license at the time of accident.

11. The burden of proof shifted upon the petitioners to substantiate that their deceased son was having valid driving license at the time of accident. The petitioners failed to substantiate the same. On perusal of award, the Tribunal has correctly held in point No.1 that the petitioners did not produce the driving license of the deceased and since the accident was invited by the deceased himself, the 2nd respondent/Insurance Company was not liable to pay compensation. However, the Tribunal awarded compensation under personal accident coverage. Therefore, as rightly contended by the appellant/2nd respondent and in view of the judgments of this Court relied on by the appellant side, that the owner/borrower of the vehicle who is not holding a valid driving license at the time of accident, will not be entitled to invoke personal accident policy also. Thus, the Tribunal has miserably failed to properly apply the above legal principle settled by the Hon’ble Supreme Court and by this Court. Therefore, the award passed by the Tribunal warrants interference and the Civil Miscellaneous Appeal has to be allowed.

12. In the result,

(i) The Civil Miscellaneous Appeal is allowed. No costs.

(ii) The judgment and decree dated 28.08.2022 passed in M.C.O.P. No.1909 of 2017 by the Motor Accident Claims Tribunal/ District and Sessions Judge, Communal Clashes Cases Court, Madurai is set aside. The M.C.O.P.No.1909 of 2017 on the file of the Motor Accident Claims Tribunal / District and Sessions Judge, Communal Clashes Cases Court, Madurai is dismissed in respect of the appellant/2nd respondent/Insurance company.

(iii) If any amount deposited by the appellant/Insurance Company in this case either before Tribunal or before this Court, the same shall be ordered to be withdrawn by the appellant/Insurance Company on appropriate application.

(iv) Consequently, connected Miscellaneous Petition is closed.

20.03.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
VSD

To

1.The District and Sessions Judge (Communal Clashes Judge/
Motor Accident Claims Tribunal),
Madurai.

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

P.VADAMALAI, J.

VSD

Pre - Delivery Judgment made in
C.M.A.(MD)No.598 of 2023
and
C.M.P(MD)No.7702 of 2023

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