IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :28.02.2025

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

CMA No.2835 of 2021

The Branch Manger
The New India Assurance Co., Limited
Branch Office(720801)
No.39C, Bye pass road,
Dharmapuri-636 701 ... Appellant

Vs.

1.Pachaiyappan
2.Nagarajan ... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, to set aside the award dated 4th day of January 2021 made in M.CO.P.No.680 of 2016 on the file of Motor Accident Claims Tribunal (Special Subordinate Court) Dharmapuri.

For Appellants : Mr.S.Dhakshnamoorthy
For Respondent : M/s.T.Kowsalya
for Mr.M.Selvam

JUDGMENT

The Civil Miscellaneous Appeal has been filed by the insurance company challenging the award passed by the Motor Accident Claims Tribunal granting a compensation of Rs. 2,29,115/- in favour of the 1st respondent/ claimant.

2. The 1st respondent/ claimant laid a claim petition seeking compensation for the injuries suffered by him in a road accident. It is his case that he was travelling in an auto bearing registration number TN-29 AU 5641 on 23.07.2016 belonged to the 2nd Respondent insured with the appellant. It is further stated in the claim petition that the driver of the auto had driven the vehicle in a rash and negligent manner without following the traffic rules and dashed against the tamarind tree near the roadside. Due to the accident, the petitioner sustained grievous injuries in the head, right leg, right hand, left forearm etc., Therefore, the claim petition was filed seeking compensation of Rs.5,00,000/-.

3. The second respondent remained *exparte* before the Tribunal. The death of the second respondent was recorded by the Tribunal and the award was passed only against the insurance company. Aggrieved by the same, the appellant/ insurance company has come before this court by way of this appeal.

4. The learned counsel for the Appellant submitted the second respondent, owner of the vehicle had died long back and therefore, at the time of accident, the first respondent/claimant being the son of the

owner of the vehicle had become co-owner of the vehicle by operation of law of succession. Therefore, being the owner, the claimant is not entitled to maintain an application seeking compensation.

5. It is the further submission of the learned counsel for the Appellant/ insurance company that first respondent cannot be the insured as well as the beneficiary.

6. The learned counsel for the First Respondent /claimant submitted that after death of registered owner of the vehicle namely second respondent, the vehicle came to be owned by brother of the claimant and therefore, the claimant cannot be treated as the owner of the vehicle.

7. Before the Tribunal, the claimant was examined as PW1. In his examination, he clearly deposed that he travelled in the auto belongs to his father, the second respondent herein. He also admitted that after death of his father, the transfer of name had not taken place and the insurance policy was also taken only in the name of deceased father.

8. Therefore, it is clear that the owner of the vehicle namely

second respondent died and the claimant is none other than the son of the owner of the vehicle. Therefore, by operation of law of succession, he becomes co-owner of the property along with other legal representatives of the deceased, if any. In that case, the insurance policy which was taken in the name of the deceased owner of the vehicle will enure to the benefit of the legal representatives. Therefore, the claimant, son of the deceased owner of the vehicle, becomes an insured. It is settled law that insured cannot be the beneficiary. It is not open to the claimant to file a claim petition seeking damage against himself. In the case on hand, the claimant, without showing himself as a legal representative of the deceased owner filed claim petition naming his father as the owner of the vehicle without disclosing his death even prior to the accident. Therefore, the conclusion reached by the Tribunal as if the claimant is the third party and hence, he is entitled to maintain a claim petition is unsustainable in law. The claimant is none other than the legal representative of the deceased owner who died prior to the accident and therefore, he cannot be insured as well as beneficiary under the policy.

9.Accordingly, the findings rendered by the Tribunal that the claim petition filed by the first respondent is maintainable and the second respondent/ insurance company is liable to pay compensation amount to the claimant by treating him as a third party is set aside. Accordingly, the civil miscellaneous appeal stands allowed.

10. It is stated by the learned counsel for the Appellant/Insurance company that the award amount is already deposited to the credit of MCOP.No.680 of 2016 on the file of Motor Accident Claims Tribunal, Special Sub-ordinate Court, Dharmapuri and in view of the allowing of the appeal, the insurance company is permitted to withdraw the deposited amount together with the accrued interest. Consequently, the connected miscellaneous petition is closed. No costs.

28.02.2025

Index:Yes/No
Internet:Yes/No
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To

1. Motor Accident Claims Tribunal,
   Special Subordinate Court, Dharmapuri.

2. The Section Officer,
   VR Section,
   High Court, Madras.

S.SOUNTHAR, J.

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