HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

M.A.C.M.A. No.1044 OF 2009

JUDGMENT:

This appeal is filed by the insurance company under Section 173 of the Motor Vehicles Act (the Act) assailing the judgment and award dated 03.6.2006 passed in M.V.O.P. No.741 of 2005 on the file of the Motor Accidents Claims Tribunal–cum-I Additional District Judge, Guntur.

2. The parties hereinafter will be referred to as they are arrayed before the Tribunal to avoid confusion.

3. The facts leading to filing of the claim petition are briefly as follows: P.V.S.N. Raju was the owner-cum-driver of TATA Sumo bearing No.AP 16W 1237. On 02.2.2005, some customers engaged TATA Sumo of P.V.S.N. Raju to go to Naidupet. On 04.2.2005 Raju, while driving Tata Sumo, was proceeding from Naidupet to Vijayawada. When the vehicle reached Crane Gutkha company, on NH5 near Pothuru, Raju lost control over the vehicle and dashed the road margin due to which the vehicle turned turtle. In the accident, one of the inmates, by name Gudisela Nanda Kumar, died on the spot whereas Raju and other inmates sustained grievous injuries. Immediately after the accident, Raju (hereinafter referred to as, the deceased) and other injured persons were shifted to Government General Hospital, Guntur, where the Duty Doctor declared death of Raju. The Station House Officer, Guntur Taluk Police Station registered a case in Crime No.29 of 2005 under Sections 338 and 304-A IPC and investigated into the matter. By the time of the accident, the deceased was aged about 28 years and used to earn Rs.3,300/- per month. The first petitioner is the wife, petitioner Nos.2 and 3 are the children and petitioner Nos.4 and 5 are the parents of the deceased and they are all dependants on the income of the deceased. TATA Sumo bearing No.AP 16W 1237 belongs to the deceased–Raju, was insured with the respondent for the period from 21.9.2004 to 20.9.2005. Therefore, the respondent–insurance company is liable to

pay compensation of Rs.6,00,000/- to the claimants with interest and costs.

4. The respondent–insurance company filed written statement denying all the averments made in the petition, *inter alia*, contending that the deceased was not having valid and effective driving licence as on the date of the accident and the vehicle in question was not in roadworthy condition at the time of the accident. As per the recitals of F.I.R., the deceased himself drove the vehicle and caused the accident and therefore, the present petition is not maintainable under law. The deceased himself is the owner of the vehicle and petitioner Nos.1 to 5 being legal representatives of deceased are not entitled to claim compensation against the insurance company. Even as per the averments made in the petition, the accident occurred due to self-negligence on the part of deceased only. The amount of compensation claimed by the petitioners, under various heads, is highly excessive and exorbitant. Hence, the petition may be dismissed so far as this respondent is concerned.

6. Basing on the above pleadings, the Tribunal framed the following issues:

1) Whether the deceased died in the accident caused due to rash and negligent driving of the Tata Sumo bearing No.AP 16W 1237 by its driver (*sic,* deceased)?
2) Whether the petitioners would be entitled for compensation? If so, what would be the just amount of compensation that the petitioners would be entitled and against whom?
3) To what relief?

7. During the course of trial, on behalf of the petitioners, P.Ws.1 and 2 were examined and Exs.A1 to A7 were marked. On behalf of the Insurance company, R.Ws.1 and 2 were examined and Exs.B1, B2 and X1 were marked.

8. On appraising the oral, documentary evidence and other material available on record, the Tribunal arrived at a conclusion that the accident occurred due to the rash and negligent driving of the Tata

Sumo by the deceased himself, and allowed the petition in part while awarding compensation of Rs.3,55,500/- directing the respondent Nos.1 and 2 (*sic,* respondent) to pay the same with proportionate costs and interest at the rate of 7.5% per annum from the date of petition till the date of deposit. Feeling aggrieved by the judgment and award passed by the Tribunal, the respondent—insurance company preferred the appeal.

9. Heard Ms.Jonna Ramani, learned standing counsel for the appellant-insurance company and Sri G.V.S. Mehar Kumar, learned counsel for the claimants.

10. The contention of learned standing counsel for the insurance company is three fold: (1) the finding of the Tribunal that Ex.B1 policy covers the risk of the driver and therefore, the insurance company is liable to pay compensation to the petitioners, is not sustainable either on facts or on law; (2) the claimants being the legal representatives of the deceased–owner of the vehicle, are not entitled to claim compensation under the Motor Vehicles Act; and (3) the findings recorded by the Tribunal are based on assumptions and presumptions and therefore, it is a fit case to allow the appeal. ***Per contra***, learned counsel for the claimants submitted that by the time of the accident, the deceased was driving the vehicle; therefore, he shall be treated as 'driver' but not as owner of the vehicle. He further submitted that Ex.B1 policy covers the risk of the driver of the vehicle and therefore, the insurance company is liable to pay compensation to the petitioners.

11. Basing on the rival contentions, the points that arise for consideration in this appeal are:

> *(1) Whether the liability can be fastened on the insurance company if the accident occurred due to self negligence of the owner of the vehicle?*
>
> *(2) Whether Ex.B1 policy covers the risk of driver or owner of the vehicle or not?*

<u>Point Nos.1 and 2</u>:

12. Both the points are interlinked with each other and hence, I am inclined to address these two points simultaneously in order to avoid

repetition and confusion.

13. As per the findings of the Tribunal, the accident occurred due to the rash and negligent driving of Tata Sumo bearing No.AP 16W 1237 by the deceased himself. The finding of the Tribunal on issue No.1 is supported by the oral and documentary evidence available on record. The oral and documentary evidence placed before the Tribunal clinchingly establishes that the accident occurred due to negligent driving of the Tata Sumo by the deceased himself. The oral testimony of R.W.1 coupled with Ex.B1 reveals that the deceased is owner of the vehicle.

14. Merely because the accident occurred out of use of the motor vehicle that itself is not a valid ground to fasten the liability on the insurance company without satisfying the other requirements as contemplated under the Act. The liability of the insurer is either statutory or contractual. No doubt, the Motor Vehicles Act is enacted with a laudable object of providing financial assistance to the victims or legal representatives of deceased of the road accidents. That does not mean the Tribunal or court can fasten the liability on the insurance company without satisfying itself the accident in question undoubtedly creates the statutory or contractual liability on the part of the insurance company.

15. In the case on hand, the deceased–owner, who drove the vehicle at the time of accident, was responsible to cause the accident. In such circumstance, whether the petitioners, who are legal representatives of the deceased, are entitled to knock the doors of the Tribunal in order to claim the compensation from the insurer is to be considered.

16. The petitioners have filed the petition under Section 163-A of the Act. If a petition is filed under Section 163-A of the Act, the petitioner need not plead and prove negligence on the part of the driver of the crime vehicle. However, Section 163-A of the Act does not debar or prohibit the insurer to establish that there was no negligence on the part of the driver of crime vehicle in order to defeat the claim of the

claimants/petitioners. The petitioners are the legal representatives of the deceased-owner; therefore, on his death, ownership of crime vehicle automatically devolves on them. The petitioners, on one hand, stepped into the shoes of the deceased–owner and thereby virtually became owners of the Tata Sumo and, on the other hand, they are claiming compensation for the death of deceased due to his own negligence.

17. Section 146 of the Act lays down the requirements for insurance against third-party risk. Where third party risk is involved, insurance policy is required to be mandatorily taken out. The requirements of policies and the limits of liability, however, have been enumerated in Section 147 of the Act. A fascicular reading of Section 146 read with 147 of the Act clearly demonstrates that the policy issued by the insurer must cover the risk of the third party. The provisions of the Act, therefore, contemplate two types of insurance policies viz., one statutory in nature and the other contractual in nature.

(i) In **Dhanraj v New India Insurance Co.Ltd.**[1], the Hon'ble apex court held at paras 8 and 10 as follows:

> 8. Thus, an insurance policy covers the liability incurred by the insured in respect of death of or bodily injury to any person (including an owner of the goods or his authorized representative) carried in the vehicle or damage to any property of a third party caused by or arising out of the use of the vehicle. Section 147 does not require an Insurance Company to assume risk for death or bodily injury to the owner of the vehicle.
> 10. In this case, it has not been shown that the policy covered any risk for injury to the owner himself. We are unable to accept the contention that the premium of Rs. 4,989/- paid under the heading "Own damage" is for covering liability towards personal injury. Under the heading "Own damage", the words "premium on vehicle and non-electrical accessories" appear. **It is thus clear that this premium is towards damage to the vehicle and not for injury to the person of the owner**. An owner of a vehicle can only claim provided a personal accident insurance has been taken out. In this case, there is no such insurance.

(ii) **Oriental Insurance Co. Ltd., v Jhuma Saha**[2] Wherein the Hon'ble apex court held at paras 10 and 11 (of AIR) as follows:

> 10. The deceased was the owner of the vehicle. For the reasons stated in the claim petition or otherwise, he himself was to be blamed for the accident. The accident did not involve motor vehicle other than the one which he was driving. The question which arises for consideration is that the deceased himself being negligent, the claim petition under Section 166 of the Motor Vehicles Act, 1988 would be maintainable.
> 11. Liability of the insurer Company is to the extent of indemnification of the insured against the respondent or an injured person, a third person or in respect of damages of property. **Thus, if the insured cannot be fastened with any liability under the provisions of the Motor Vehicles Act, the question of the insurer being liable to indemnify the insured, therefore, does not arise.**

(iii) **Oriental Insurance Co. Ltd., v Rajni Devi**[3]. Wherein the Hon'ble apex court held at paras 7 as follows:

> 7. The Tribunal, in our opinion, therefore, was not correct in taking the view that while determining the amount of compensation, the only factor which would be relevant would be merely the use of the motor vehicle. Section 163A reads thus:
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> > **163A**. **Special provisions as to payment of compensation on structured formula basis-**(1) Notwithstanding anything contained in this Act or in any other law for the time being in force or instrument having the force of law, the owner of the motor vehicle of the authorised insurer shall be liable to pay in the case of death or permanent disablement due to accident arising out of the use of motor vehicle, compensation, as indicated in the Second Schedule, to the legal representatives or the victim, as the case may be.
> > Explanation.-For the purposes of this sub-section, "permanent disability" shall have the same meaning and extent as in the Workmen's Compensation Act, 1923 (8 of 1923).
> > (2) In any claim for compensation under Sub-section (1), the claimant shall not be required to plead or establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act or neglect or default of the owner of the vehicle or vehicles concerned or of any other person.
> > (3) The Central Government may, keeping in view the cost of living by notification in the Official Gazette, from time to time amend the Second Schedule.
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> **The said provision cannot be said to have any application in regard to an accident wherein the owner of the motor vehicle himself is involved.** The question is no longer res integra.

(iv) **New India Assurance Co. Ltd., v Sadanand Mukhi**[4]. Relevant portion in para 11 reads as follows:

> The provisions of the Act, therefore, provide for two types of

> insurance — one statutory in nature and the other contractual in nature. Whereas the insurance company is bound to compensate the owner or the driver of the motor vehicle in case any person dies or suffers injury as a result of an accident; **in case involving owner of the vehicle or others are proposed to be covered, an additional premium is required to be paid for covering their life and property.**

(v) **Ningamma v United India Insurance Co. Ltd.,[5].** Relevant portion in para 11 reads as follows:

> 22. In a case wherein the victim died or where he was permanently disabled due to an accident arising out of the aforesaid motor vehicle in that event the liability to make payment of the compensation is on the insurance company or the owner, as the case may be as provided under Section 163-A. **But if it is proved that the driver is the owner of the motor vehicle, in that case the owner could not himself be a recipient of compensation as the liability to pay the same is on him.** This proposition is absolutely clear on a reading of Section 163-A of the MVA. Accordingly, the legal representatives of the deceased who have stepped into the shoes of the owner of the motor vehicle could not have claimed compensation under Section 163-A of the MVA.

From the above decisions, the legal position that emerges is that if the accident occurred due to self-negligence of the owner of the vehicle, his legal representatives are not entitled to claim compensation as a matter of statutory right. In the case on hand, the accident occurred due to the negligence of the deceased himself while driving the crime vehicle. Therefore, the petitioners are statutorily not entitled to claim compensation from the insurance company. Further, as per the principle in **Rajni Devi** (supra), Section 163-A of the Act has no application in regard to the accident involving the owner of motor vehicle.

18. The next question that falls for consideration is whether Ex.B1 policy covers the risk of owner of the vehicle (deceased) so as to mulct the liability on the insurance company. As observed earlier, the Act policy a contemplated under Section 147 of the Act covers third party risk only. Undoubtedly, the owner of the vehicle is not a third party. In order to cover the risk other than 'third party', the insured has to pay additional premium covering the risk of the persons specified in the

policy. Now, the crucial question that arises is whether Ex.B1 policy covers the risk of the owner of the vehicle.

19. A perusal of Ex.B1 reveals that the insured paid Rs.25/- covering the risk of 'one employee' covered under the Workmen's Compensation Act. Establishment of employer-employee relation is *sine qua non* to claim compensation under Ex.B1 policy. Whether the word 'owner of vehicle' encompasses in 'employee'? In order to constitute employer – employee relationship, two persons are necessary. Self same individual cannot be treated as both 'employer' and 'employee'. For all practical purposes, the deceased will be treated as owner of the vehicle and not as a driver of somebody else so as to take advantage under Ex.B1 policy.

20. The accident occurred due to self-negligence of the deceased. The owner of the vehicle is vicariously liable for the wrongful acts done by his driver. The question of vicarious liability does not arise in this case as the accident occurred due to the self-negligence of the owner himself. The insurance company has to indemnify the liability of the insured if the claimants establish their statutory right or contractual right to claim compensation from the owner of the vehicle. In the instant case, the petitioners being legal representatives of the deceased are not entitled to claim compensation for the wrongful act of the deceased.

21. Having regard to the facts and circumstances of the case and also the principle enunciated in the cases cited supra, this court is of the considered view that there is no statutory or contractual obligation on the part of the insurance company to pay compensation to the legal representatives of the deceased (owner of the vehicle). The Tribunal misconstrued the terms and conditions of Ex.B1 policy. The Tribunal proceeded on a wrong premise that the word 'employee' as employed in the Workmen's Compensation Act includes 'owner of the vehicle' if he drove the vehicle at the time of the accident. Therefore, the finding of the Tribunal that there is a statutory obligation on the part of the

insurance company to pay compensation to the petitioners as Ex.B1 policy covers the risk of driver is not sustainable simply because, at the relevant point of time, the deceased drove the vehicle. The judgment and award of the Tribunal is liable to be set aside. Accordingly, these points are answered.

22. Hence, the appeal is allowed setting aside the judgment and award dated 03.6.2006 passed in M.V.O.P. No.741 of 2005 on the file of the Motor Accidents Claims Tribunal–cum-I Additional District Judge, Guntur. There shall be no order as to costs. Miscellaneous petitions, if any pending in this appeal, shall stand closed.

T.SUNIL CHOWDARY, J

Date: 30.4.2015
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[1] (2004) 8 SCC 553
[2] (2007) 9 SCC 263
[3] (2009) 2 SCC 417
[4] (2008) 5 SCC 736
[5] (2009) 13 SCC 710