

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.01.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2451 of 2018

1.N.Kuppu
2.K.Natarajan

.. Appellants/Petitioners

Vs.

1.P.Mari

2.ICICI Lombard General Insurance Co. Ltd.,
Chotah Bhai Centre, 2nd Floor,
No.140, Nungambakkam High Road,
Chennai - 600 034.

.. Respondents/Respondents

(R1 set exparte before
the Tribunal)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988 against the award and decree dated 19.03.2018 made in M.C.O.P.No.6676 of 2014, on the file of the Chief Judge, Small Causes Court, (Motor Accidents Claims Tribunal), Chennai.

For Appellants : Ms.Ramya V.Rao
and Ms.U.Swathy

For R2 : Ms.R.Sreevidya

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the award and decree dated 19.03.2018 made in M.C.O.P.No.6676 of 2014, on the file of the Chief Judge, Small Causes Court, (Motor Accidents Claims Tribunal), Chennai.

2.By consent of both the parties, this appeal is taken for final disposal at the admission stage itself.

3.The appellants are the claimants. By impugned award, the claim petition was dismissed. Challenging the order of

dismissal, the claimants/appellants have come out with the present appeal.

4.The learned counsel appearing for the appellants contended that the Tribunal failed to appreciate the materials on record and erroneously dismissed the claim petition on the ground that deceased being a tort-feasor, appellants are not entitled to claim any compensation. Section 163 A of the Motor Vehicles Act,1988 (hereinafter referred to as 'the Act') was inserted for the benefit of general public. As per Section 163-A of the said Act, the claimants need not prove the negligence on the part of the driver or anybody else. The deceased was not a tort-feasor and accident did not occur due to his fault. The policy issued by the second respondent is not an Act policy, but it is a comprehensive policy and second respondent is liable to pay compensation.

5.The learned counsel appearing for the appellants in support of her contention, relied on the following judgments reported in:

(i)2018 1 TN MAC 135 (Cholamandalam M.S.General Life Insurance Co. Ltd., Vs. Amutha and others):

"1.The insurance company has filed this Civil Miscellaneous Appeal questioning the award dated 28.03.2013 made in M.C.O.P No.551 of 2010 on the file of the Motor Accident Claims Tribunal, (Addl. District & Sessions Judge), Dindigul on the ground of maintainability of the claim. The ground pleaded for non-suiting the claimant that the victim was himself the tort-feasor.

2.The learned counsel appearing for the appellant insurance company placed reliance on the decision of the Hon'ble Supreme Court reported in (2012) 2 SCC 356 ([National Insurance Company Ltd., V. Sinita](#)). But, I am not inclined to agree with the said contention for the reason that the Larger Bench of the Supreme Court of India in the decision reported in 2004 ACJ 934 (SC), ([Deepal Girishbhai Soni v. United India Insurance Co. Ltd](#)) has held that [Section 163 A](#) of the Motor Vehicles Act can be invoked even in cases when negligence is on the part of the victim. This decision by a three Judges Bench has been followed in [United India Insurance Company Limited Vs. Sunil Kumar and another](#) (2013 (6) CTC 891). The Hon'ble Supreme Court has held that the claim under [Section 163 \(A\)](#) of the Act shall not be defeated by the insurance company or the vehicle owner for the reason of any wrongful act, neglect or default of the victim. Though an authoritative

pronouncement is awaited from a Larger Bench as on date, this Court feels bound by the decision rendered in Deepal Girishbhai Soni 's case. The questions of law raised in this appeal have already been answered against the appellant in these two decisions. I find no merit in this appeal. The award dated 28.03.2013 made in M.C.O.P No.551 of 2010 on the file of the Motor Accident Claims Tribunal, (Addl. District & Sessions Judge), Dindigul is confirmed."

(ii)2018 2 TN MAC 441 [Iffco Tokio General Insurance Co. Ltd., Vs. S.Ilangovan and another]:

"19. Thus, it is clear from the decisions of the Hon'ble Supreme Court that the appellant, who is the Insurer of the motorcycle bearing registration No.TN-28AB 8833 used at the time of accident, cannot raise any defence of negligence on the part of the victim to counter for compensation.

23. In [Section 163-A](#), the expression notwithstanding anything contained in this Act or in any other law for the time being in force has been used, which goes to show that the Parliament intended to insert a non obstante clause of wide nature which would mean that the provisions of [Section 163-A](#) would apply despite the contrary provisions existing in the said Act or any other law for the time being in force. Thus, [Section 163-A](#) of the M.V. Act covers cases where even negligence is on the part of the victim."

(iii)2013 (6) CTC 891 [United India Insurance Co. Ltd., Vs. Sunil Kumar and another]:

"8. We are, therefore, of the view that liability to make compensation under [Section 163-A](#) is on the principle of no fault and, therefore, the question as to who is at fault is immaterial and foreign to an enquiry under [Section 163-A](#). [Section 163-A](#) does not make any provision for apportionment of the liability. If the owner of the vehicle or the insurance company is permitted to prove contributory negligence or default or wrongful act on the part of the victim or claimant, naturally it would defeat the very object and purpose of [Section 163-A](#) of the Act. Legislature never wanted the claimant to plead or establish negligence on the part of the owner or the driver. Once it is established that death or permanent disablement occurred during the course

of the user of the vehicle and the vehicle is insured, the insurance company or the owner, as the case may be, shall be liable to pay the compensation, which is a statutory obligation."

(iv)2017 (2) TN MAC 753 (SC) [United India Insurance Co. Ltd., Vs. Sunil Kumar and another]:

"8. From the above discussion, it is clear that grant of compensation under [Section 163-A](#) of the Act on the basis of the structured formula is in the nature of a final award and the adjudication thereunder is required to be made without any requirement of any proof of negligence of the driver/owner of the vehicle(s) involved in the accident. This is made explicit by [Section 163A\(2\)](#). Though the aforesaid section of the Act does not specifically exclude a possible defence of the Insurer based on the negligence of the claimant as contemplated by [Section 140\(4\)](#), to permit such defence to be introduced by the Insurer and/or to understand the provisions of [Section 163A](#) of the Act to be contemplating any such situation would go contrary to the very legislative object behind introduction of [Section 163A](#) of the Act, namely, final compensation within a limited time frame on the basis of the structured formula to overcome situations where the claims of compensation on the basis of fault liability was taking an unduly long time. In fact, to understand [Section 163A](#) of the Act to permit the Insurer to raise the defence of negligence would be to bring a proceeding under [Section 163A](#) of the Act at par with the proceeding under [Section 166](#) of the Act which would not only be self-contradictory but also defeat the very legislative intention.

9. For the aforesaid reasons, we answer the question arising by holding that in a proceeding under [Section 163A](#) of the Act it is not open for the Insurer to raise any defence of negligence on the part of the victim."

6.Per contra, the learned counsel appearing for the second respondent contended that in the claim petition itself it has been stated that when the deceased was riding the motor cycle over the sewerage water and seeing the car coming in the opposite direction, applied sudden brake. Unable to stop the vehicle even after applying the brake, he dashed against the car and fell down and sustained injuries and died. The deceased was riding the motor cycle belonging to the first respondent and

insured with the second respondent and the policy covers only third party liability and not damages to owner or rider of the motor cycle. The Tribunal has considered all the materials on record and judgment relied on by the learned counsel for the appellants and rightly dismissed the claim petition and hence, prayed for dismissal of the appeal.

7. The learned counsel appearing for the second respondent relied on the following judgments:

(i) 2007 (9) SCC 263 [Oriental Insurance Co. Ltd., Vs. Jhuma Saha and others]:

"11. Liability of the insurer-Company is to the extent of indemnification of the insured against the respondent or a 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 Motor Vehicle Act, the question of the insurer being liable to indemnify insured, therefore, does not arise."

(ii) 2007 AIR SC 1609 [Oriental Insurance Co. Ltd., Vs. Meena Variyal and others]:

"11. The object of the insistence on insurance under Chapter XI of the Act thus seems to be to compulsorily cover the liability relating to their person or properties of third parties and in respect of employees of the insured employer, the liability that may arise under the Workmen's Compensation Act, 1923 in respect of the driver, the conductor and the one carried in a goods vehicle carrying goods. On this plain understanding of Section 147, we find it difficult to hold that the insurance company, in the case on hand, was liable to indemnify the owner, the employer Company, the insured, in respect of the death of one of its employees, who according to the claim, was not the driver. Be it noted that the liability is not one arising under the Workmen's Compensation Act, 1923 and it is doubtful, on the case put forward by the claimant, whether the deceased could be understood as a workman coming within the Workmen's Compensation Act, 1923. Therefore, on a plain reading of Section 147 of the Act, it appears to be clear that the insurance company is not liable to indemnify the insured in the case on hand."

(iii) 2009 AIR SC 1788 [New India Assurance Co. Ltd., Vs. Sadanand Mukhi and others]:

"19. Learned counsel for the respondents would contend that the object and purport of the Act

being to cover the risk to life of any person, the said decision should be applied in this case also. We do not think that it would be a correct reading of the said judgment as therein National Insurance Co. Ltd., Vs. Laxmi Narain Dhut, 2007 (2) RCR (Civil) 345: 2007(1) RAJ 956: [2007 3 SCC 700]. has been followed. In Laxmi Narain Dhut (supra) a distinction between a statutory policy and a contractual policy has clearly been made out.

These decisions, clearly, are applicable to the fact of the present case.

20. In view of the aforementioned authoritative pronouncements, we have no hesitation of hold that the insurance company was not liable. The impugned judgment, therefore, cannot be sustained. It is set aside accordingly. The appeal is allowed. No costs."

(iv) 2009 ACJ 2020 [Ningamma and another Vs. United India Insurance Co. Ltd.,]:

"18. In the case of Oriental Insurance Company Ltd. v. Rajni Devi and Others, (2008) 5 SCC 736, wherein one of us, namely, Hon'ble Justice S.B. Sinha is a party, it has been categorically held that in a case where third party is involved, the liability of the insurance company would be unlimited. It was also held in the said decision that where, however, compensation is claimed for the death of the owner or another passenger of the vehicle, the contract of insurance being governed by the contract qua contract, the claim of the claimant against the insurance company would depend upon the terms thereof. It was held in the said decision that Section 163-A of the MVA cannot be said to have any application in respect of an accident wherein the owner of the motor vehicle himself is involved. The decision further held that the question is no longer res integra. The liability under section 163-A of the MVA is on the owner of the vehicle. So a person cannot be both, a claimant as also a recipient, with respect to claim. Therefore, the heirs of the deceased could not have maintained a claim in terms of Section 163-A of the MVA. In our considered opinion, the ratio of the aforesaid decision is clearly applicable to the facts of the present case. In the present case, the deceased was not the owner of the motorbike in question. He borrowed the said motorbike from its real owner. The deceased cannot

be held to be employee of the owner of the motorbike although he was authorised to drive the said vehicle by its owner, and therefore, he would step into the shoes of the owner of the motorbike.

19. We have already extracted Section 163-A of the MVA hereinbefore. A bare perusal of the said provision would make it explicitly clear that persons like the deceased in the present case would step into the shoes of the owner of the vehicle. 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."

(v) 2008 (5) SCC 736 [Oriental Insurance Co. Ltd., Vs. Rajni Devi and others]:

"10. The liability under Section 163-A of the Act is on the owner of the vehicle as a person cannot be both, a claimant as also a recipient. The heirs of Janakraj could not have maintained a claim in terms of Section 163-A of the Act. For the said purpose only the terms of the contract of insurance could be taken recourse to."

8. Heard the learned counsel appearing for the appellants as well the second respondent and perused the materials on record.

9. The issue whether Insurance Company is entitled to raise the question of negligence on the part of the injured person or deceased when the claim petition is filed under Section 163-A of the Act is no longer res-integra. This issue was considered by Three-Judges Bench of the Hon'ble Apex Court in the judgment reported in 2017 (2) TN MAC 753 (SC) and 2018 (2) TN MAC SC 149. The Hon'ble Apex Court held that in a claim petition filed under Section 163-A of the Act, the Insurance Company is not entitled to raise the issue of negligence and tort-feasor also is not entitled to claim compensation. The relevant portion of the said judgments reads as follows:

(i)2017 (2) TN MAC 753 (SC) [United India Insurance Co. Ltd., Vs. Sunil Kumar and another]:

"7.Section 163-A, on the other hand, was introduced in the New Act for the first time to remedy the situation where determination of final compensation on fault basis under Section 166 of the Act was progressively getting protracted. The Legislative intent and purpose was to provide for payment of final compensation to a class of claimants (whose income was below Rs.40,000/- per annum) on the basis of a structured formula without any reference to fault liability. In fact, in Hansrajbhai V. Kodala (supra) the bench had occasion to observe that:

"Compensation amount is paid without pleading or proof of fault, on the principle of social justice as a social security measure because of ever-increasing motor vehicle accidents in a fast-moving society. Further, the law before insertion of Section 163-A was giving limited benefit to the extent provided under Section 140 for no-fault liability and determination of compensation amount on fault liability was taking a long time. That mischief is sought to be remedied by introducing Section 163-A and the disease of delay is sought to be cured to a large extent by affording benefit to the victims on structured-formula basis. Further, if the question of determining compensation on fault liability is kept alive it would result in additional litigation and complications in case claimants fail to establish liability of the owner of the defaulting vehicles."

8. From the above discussion, it is clear that grant of compensation under Section 163-A of the Act on the basis of the structured formula is in the nature of a final award and the adjudication thereunder is required to be made without any requirement of any proof of negligence of the driver/owner of the vehicle(s) involved in the accident. This is made explicit by Section 163A (2). Though the aforesaid section of the Act does not specifically exclude a possible defence of the Insurer based on the negligence of the claimant as contemplated by Section 140(4), to permit such defence to be introduced by the Insurer and/or

to understand the provisions of Section 163A of the Act to be contemplating any such situation would go contrary to the very legislative object behind introduction of Section 163A of the Act, namely, final compensation within a limited time frame on the basis of the structured formula to overcome situations where the claims of compensation on the basis of fault liability was taking an unduly long time. In fact, to understand Section 163A of the Act to permit the Insurer to raise the defence of negligence would be to bring a proceeding under Section 163A of the Act at par with the proceeding under Section 166 of the Act which would not only be self-contradictory but also defeat the very legislative intention.

10.The issue was again considered by the Three-Judges Bench of the Hon'ble Apex Court and referring to the earlier judgment referred to with an approval, it was held in paragraph No.5 of the judgment reported in 2018 (2) TN MAC 149 (SC) [Shivaji and another Vs. Divisional Manager, United India Insurance Co. Ltd., and others]:

"5.The issue which arises before us is no longer res integra and is covered by a recent judgment of Three-Judges of this Court in United India Insurance Co. Ltd., Vs. Sunil Kumar and another, 2017 (2) TN MAC 753 (SC): AIR 2017 SC 57110, wherein it was held that to permit a defence of negligence of the claimant by the insurer and/or to understand Section 163-A of the Act as contemplating such a situation, would be inconsistent with the legislative object behind introduction of this provision, which is "final compensation within a limited time frame on the basis of the structured formula to overcome situations where the claims of compensation on the basis of fault liability was taking an unduly long time". The Court observed that if an insurer was permitted to raise a defence of negligence under Section 163-A of the Act, it would "bring a proceeding under Section 163-A of the Act at par with the proceeding under Section 166 of the Act which would not only be self-contradictory but also defeat the very legislative intention". Consequently, it was held that in a proceeding under Section 163-A of the Act, the insurer cannot raise any defence of negligence on the part of the victim to counter a claim for compensation."

The judgments relied on by the learned counsel appearing for the second respondent relate to the issue under Sections 147 and 166 of the Act. The scope of Section 163-A of the Act was not an issue in those judgments. As far as the judgments (iv) & (v) referred to above, relied on by the learned counsel appearing for the second respondent, the issue before the Court was the Scope of Section 163-A of the Act. In the first judgment, the Courts held that a tort-feasor is not entitled to claim compensation, especially when the tort-feasor borrowed the vehicle from the owner/insured and sustained injury by his own fault. The two judgments were delivered by the Two-Judges Bench. While so, the two judgments reported in 2017 (2) TN MAC 753 SC and 2018 (2) TN MAC 149 SC, referred to above are not only subsequent judgments, but also delivered by larger Bench of Three-Judges. The ratio in the two subsequent judgments referred to above are squarely applicable to the facts of the present case. In view of the subsequent judgments by larger Benches, the judgments relied on by the learned counsel appearing for the 2nd respondent do not advance its case.

11. In the result, the Civil Miscellaneous Appeal is allowed. No costs.

krk/gsa

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Chief Judge,
Small Causes Court,
(Motor Accidents Claims Tribunal), Chennai.

+1cc to M/s.R.Sreevidhya, Advocate, SR.No.2462
+2cc to Mr.A.N.Viswanatha Rao, Advocate, SR.No.1574

CMA.No.2451 of 2018

Cnr(CO)
Kak(11/04/2019)