IN THE HIGH COURT OF JUDICATURE AT MADRAS

[RESERVED ON : 20.02.2019]

[PRONOUNCED ON : 15.07.2019]

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

C.M.A.NO.2788 OF 2011
AND
M.P.NO. 1 OF 2011

The Branch Manager,
National Insurance Company Limited,
No.25, Coimbatore Road,
Pollachi Post & Taluk,
Coimbatore District. .. Appellant/2nd Respondent

Vs.

1. D.P.Rajaleena

2. Minor Dharoon Natarasan

3. Nachathal .. 1 to 3 Respondents/ Petitioners 1 to 3

4. D.R.Ponnuswamy ...4th Respondent/ 1st Respondent

Prayer:

This petition is filed U/s 173 of the Motor Vehicles Act, 1988 to set aside Decree and Judgment passed in MACT O.P.No.33 of 2009 dated 10.01.2011 on the file of Motor Accident Claim Tribunal, Subordinate Judge, Pollachi.

For Appellant : Mr.N.B. Surekha
Mr.S.Mukunth for
For R1 to R3 : M/s Saravabhavaa Associates

For R4 : Notice not ready

JUDGMENT

This Civil Miscellaneous Appeal has been preferred by the insurance company challenging the Decree and Judgment passed in MACT O.P.No.33 of 2009 dated 10.01.2011 on the file of Motor Accidents Claims Tribunal, Subordinate Judge, Pollachi.

2. The brief facts, which are necessary for disposal of this appeal, are as follows:

The Insurance company is the appellant herein. The first respondent is the wife of the deceased, second respondent is the minor child of the deceased, third respondent is the mother of the deceased and the fourth respondent is the owner of the vehicle involved in the accident. On 20.08.2004, the deceased namely, Ezhilkumar was driving a Maruthi 800 Car bearing Registration No.TN-38-C-1500 from Coimbatore to Trichy Road and when he was nearing Madhapur, the car tyre got punctured and the driver of the car lost his control and hit against the stone laid on the road side. Due to the accident, the deceased has sustained serious head injuries and thereafter, he was taken to Government Hospital, Palladam and then referred to KMCH at Coimbatore where he succumbed to injuries on the same day itself.

3. Before the Tribunal, on the side of the claimants, the first claimant examined herself as P.W.1 and documents Exs.P1 to P.14 were marked. On the side of the respondents, one witness was examined as R.W.1 and no document was marked.

4. P.W.1, who is the wife of the deceased, had deposed that the first respondent before the Tribunal is the owner of the vehicle and her husband has taken the vehicle from him and when the car was proceeding from Coimbatore to Trichy main road, the said accident has taken place. The Tribunal rendered its Judgment after taking into consideration of Section 163(A) of the M.V.Act and some other Judgments which are as follows:

(a) National Insurance Consequential., Ltd Vs Sushma Devi and other reported in 2009 ACJ 1901.

(b) New India Assurance Consequential., Ltd Vs Manishaben Mahendra and other reported in 2009 ACJ 1861.

(c) New India Assurance Company Ltd Vs Chauhan Harisingh Padam Singh and others reported in 2010 (1) T.A.C.704(Guj)

(d) Arati Dolai and other vs Baser Ali Bux and others reported in 2009 ACJ (1569)

5. The Tribunal, after considering the oral and documentary evidence, has held that both owner and Insurance Company are liable to pay compensation and awarded a sum of Rs.4,40,500/- as compensation to the claimants. As against the said award passed by the Tribunal, the insurance company has preferred this appeal.

6. The learned counsel appearing for the appellant/ Insurance company would contend that the liability fastened upon the appellant/Insurance Company is improper. The coverage under third party claim does not arise on the facts and circumstances of the case, since the deceased had borrowed the car from its owner and he only drove the vehicle and met with an accident.

7. The learned counsel appearing for the respondents 1 to 3/claimants would contend that as per Section 163-A of the M.V. Act, the claimants shall not be required to prove negligence on the part of the owner or any other person and the fault of the driver is immaterial and claim is maintainable even the accident is caused due to the negligence of the victim.

8. Heard both sides and perused the materials available on record.

9. Before adverting further, it will be appropriate to give a fair reading of the Judgment rendered in similar case, which is relevant to the facts of this appeal.

(i) In the case of Nigamma & Another Vs. United India Insurance Co. Ltd reported in CDJ 2009 SC 2018, the Hon'ble Supreme Court has categorically held that even though if the deceased was not the owner of the vehicle, he can step into the shoes of the owner of the vehicle. The relevant portion of the Judgment is extracted hereunder:

> "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 authorized to drive the said vehicle by its owner, and therefore, he would step into the shoes of the owner of the motorbike. Section 163-A 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."
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> 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.

10. In the above decision, the Hon'ble Apex Court has held that where, 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 claimants against the insurance Company would depend upon the terms thereof.

11. In a case wherein the victim died or where he was permanently disabled due to an accident arising out of the aforesaid motor vehicle and 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 of the M.V. Act. But if it is proved that the driver is the owner of the motor vehicle, the liability to pay the same is on him. This proposition is absolutely clear on a reading of Section 163-A of the MV Act. 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 MV Act.

12. On the admitted factual matrix of the case, the deceased had borrowed the car from the owner of the vehicle and while he was driving the car dashed against the stone in the road and met with the accident. In other words, in case no other vehicle is involved in the accident, the claimant should establish as to whether he is a third party and his risk is covered under the terms and conditions of the policy.

13. It is to be stated that in view of the legal position discussed above, the claim made under Section 163-A of the M.V. Act is founded on the fault liability principle. The law only enables the claimants to seek relief under Section 163-A of the MV Act on structured formula basis. To fasten the liability on the Insurance Company, the claimants are required to establish the fact that whether the deceased is a third party and his risk is covered under the terms and conditions of the policy.

14. The deceased, in the instant case, is admittedly not a third party. The claimants did not adduce any evidence showing that the accident had occurred in the course of the employment of the deceased with the respondent No.2, owner of the vehicle, or that under the terms and conditions of the policy under which the car involved in the accident was insured with the appellant insurance company where his risk

is covered. The claims Tribunal had recorded a categorical finding that the accident had occurred on account of the fault of the deceased himself who was driving the vehicle at the time of the accident. Therefore, under law, he is not entitled to maintain a claim under the provisions of Section 163-A of the Motor Vehicles Act which was founded on fault liability principle.

15. Therefore, in my considered view, the Tribunal went wrong in holding that the claim Under Section 163-A of the MV Act is maintainable before it and that the insurance company is liable to pay compensation to the claimants. The said finding is liable to be set aside in the present appeal."

(iv) This Court in United India Insurance Co. Ltd., Vs. K.Shanthaku and anothers reported in CDJ 2014 MHC 6148 has restricted the liability to Rs.25,000/-in case of injury and the relevant portion of the Judgment is extracted hereunder:

> '' 8. But, it is pertinent to note that the claimant himself is a tortfeasor.So far as Section 163A of MV Act is concerned, if an application is filed by a third party, the Tribunal can award compensation on structure formula, without going into the aspects of wrongful act,neglect,default of the owner/driver of the vehicle or vehicles concerned or of any other person. But, awarding compensation without discussing the rash and negligence, cannot be made applicable to the case, where the claim is made by the tortfeasor, who had caused the accident. Therefore, in the considered opinion of this Court, in the instant case, the compensation awarded by the Tribunal on a finding that since the claim petition has been filed under Section 163A of the Motor Vehicles Act, the claimant is entitled for compensation as per structured formula, is not correct. At the maximum, the claimant is entitled for compensation under no fault liability under Section 140 of the Motor Vehicles Act. Hence, the compensation amount of Rs.45,100/-awarded by the Tribunal is hereby reduced to Rs.25,000/- under no fault liability.

16. After analyzing the documents and evidence and going through a fair reading of the above Judgments, this Court would

rely upon the Judgment rendered by this Court in respect of the similar set of facts of this case.

17. In the result, this Court is inclined to pass the following order:

a) this Civil Miscellaneous appeal is allowed and the appellant/Insurance Company is exonerated from the liability fixed by the Tribunal, however, claimants are entitled to receive only a sum of Rs.50,000/- being fatal case.

(b) the appellant/Insurance Company, after deducting the amount already paid as a pre-condition, is required to deposit the balance of its liability as fixed in the earlier clause.

(c) On such deposit being made, it is open to the respondents 1 to 3/claimants to withdraw the same.

(d) No costs. The connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(COMP)

//True Copy//

Sub Assistant Registrar

SMN

To

1. The Motor Accidents Claims Tribunal
Sub ordinate Court, Pollachi.

2. The Section Officer,
V.R.Section, High Court,
Madras - 104.

+1cc to M/s Saravabhavaa Associates, Advocate, S.R.No.59798
+1cc to Mr.N.B.Surekha, Advocate, S.R.No.60387

CMA.No.2788 of 2011

RR(CO)
CS/07/02/2020