IN THE HIGH COURT OF JUDICATURE AT MADRAS
Dated:15.09.2020
CORAM:
THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN
C.M.A.No.1251 of 2016
and
C.M.P.No.9483 of 2016

United India Insurance Company Ltd.,
Branch Office-III,
19/1, Kalpana Complex,
Birds Road, Kantonement,
Trichy 620 001. : Appellant/2nd Respondent

/versus/

1.Rajini : 1st Respondent/Petitioner

2.Imayavaramban : 2nd Respondent/1st Respondent

Prayer: Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act against the award and decree dated 22.02.2016 made in O.P.No.494 of 2014 on the file of the Motor Accident Claims Tribunal (Chief Judicial Magistrate), Perambalur.

For Appellant :Mr.D.Bhaskaran

For R1 :No appearance
For R2 :Died, Exparte before Tribunal

J U D G M E N T

(The case has been heard through video conference)

When the matter has been listed for final disposal for the past four hearings in two months, the learned counsel appearing for the 1st respondent has not appeared.

2.The learned counsel appearing for the appellant-Insurance Company would submit that, it is the case, where the Tribunal has erred in fixing the liability on the Insurance Company, when admittedly, the tort-feasor is the claimant and he had no driving license to ride the two wheeler. The Tribunal has rightly referred the Judgment of the Hon'ble Supreme Court rendered in Ningamma and Another v. United India Insurance Co.Ltd., reported in [2009 ACJ 2020], where the Hon'ble Supreme Court has categorically held that the rider of the motor vehicle step into the shoes of the owner and there is no contractual liability on the part of the insurer to pay the owner of the vehicle, who is the tort-feasor. Despite referring the said judgment, the Tribunal has considered the claimant as a third party, which is contrary to the provisions of the Motor Vehicles Act as well the pronouncement of the Hon'ble Supreme Court in Ningamma case referred above and Ramkhiladi and another v. United India Insurance Co.Ltd and another [2020 (1) TN MAC 1 (SC)]. Therefore, the award warrants interference in sofar as liability.

3.It is the case where the claimant while riding the two wheeler TVS XL Super bearing Reg.No.TN 48 V 9433 dashed against the Transport Corporation bus and sustained injury. The claimant has stated that while he was riding the TVS XL Super owned by the first respondent and insured with the 2nd respondent near Notchiam Privu Road on Trichy to Notchiam Privu Road dashed against the Transport Corporation Bus bearing Reg.No.TML 5845, as a result, he was thrown out from the vehicle and sustained grievous injuries. The claim petition was filed under Section 163 A of the Motor Vehicles Act, 1988. However, the claimant has asserted that his monthly income is around Rs.6000/-. Therefore, the claim petition was opposed by the Insurance Company on the ground that the petition under Section 163A is not maintainable, since the claimant is not earning income less than Rs.40,000/- p.a. Further, the claimant has no driving license and he is the tort-feasor and he has colluded against the transport corporation bus due to his rash and negligent driving.

4.The Tribunal, in the said circumstances, rejecting the defence of the Insurance Company has awarded Rs.2,18,500/- as compensation to the claimant. The admitted facts clearly indicates that the claim petition is not maintainable under Section 163-A of the Motor Vehicles Act, 1988. The claimant has asserted his monthly income as Rs.6,000/-. Whereas, the Tribunal has fixed his monthly income to ascertain the loss of income as Rs.4,000/-. Either way, the claim petition under Section 163-A of the Motor Vehicles Act, 1988 is not maintainable, since the income exceeds Rs.40,000/-p.a. Therefore, it is the duty of the claimant to establish the accident occurred due to the negligence of the other vehicle. However, the facts here remains that the claimant has rashly and negligently driven his vehicle and hit the transport bus. Furthermore, the First Information Report relied on by the claimant indicates that the claimant is the tort-feasor. Being the borrower of the vehicle, he had entered into the shoes of the owner/the first respondent herein. The insurance policy does not cover, if the owner of the vehicle is the tort-feasor. The Tribunal has miserably mis-understand the dictum laid down by the Hon'ble Supreme Court in Ningamma case (cited supra).

5.Having referred and relied on the judgment cited, the Tribunal should have exonerated the Insurance Company, but contrarily fastened the liability on the Insurance Company holding that the claimant is a third party. The said observation is totally contrary to law. Even assuming the application considered under Section 163-A of the Motor Vehicles Act, 1988, the borrower of the vehicle if is a tort-feasor, he cannot claim compensation even under Section 163-A of the Motor Vehicles Act, 1988.

6.In the recent judgment of Our High Court in C.M.A.No. 1848 of 2017 dated 12.03.2020, the Hon'ble Single Judge has extracted the provision of Section 147 of Motor Vehicles Act, 1988 and relying upon the Hon'ble Supreme Court judgment referred in Ramkhiladi and another v. United India Insurance Co.Ltd and another [2020 (1) TN MAC 1(SC)] has held as follows:-

> "11. With reference to Section 163-A of the Motor Vehicles Act, 1988, the Hon'ble Supreme Court has taken a view that if a borrower of the vehicle met with an accident while riding the vehicle, he cannot claim compensation under Section 163-A of the Act. The reason being in the event of granting compensation without adjudication of negligence, then the same would result in defeating the very object of the Act, under Sections 147 and 166 of the Motor Vehicles Act. When Section 147 categorically enumerates requirements of policies, limits and liabilities, the same cannot be whittled down, while dealing with the claim petitions under Section 163-A of the Act. All these provisions are to be read conjointly for the purpose of granting the benefit of Special Provision enacted under Section 163-A of the Act, for payment of compensation on structured formula basis. When the Special Provision is specifically provided for a structured formula basis, it cannot be read in isolation with reference to the nature of the contracted policy and the requirement of policy and limited liabilities clauses, which all are well enumerated under the provisions of the Act. Thus, this Court is of the considered opinion that a person, who borrowed a vehicle from the registered owner and while driving the same met with an accident sustained injuries or dead, then he is not entitled to claim any compensation under Section 163-A of the Act and even for

> claiming Personal Accident Policy (not a statutory coverage in terms of Section 147 of the Act), he is bound to establish the three mandatory conditions and in the absence of compliance with the said three conditions, he is not entitled for compensation."

7.This Court is of the opinion that the Tribunal has miserably failed to properly apply the dictum of the Hon'ble Supreme Court rendered in Ningamma case (cited supra). The borrower of the two wheeler enters into the shoes of the owner. If the insurance policy does not cover the owner being the tort-feasor, it applies to the borrower also. By no stretch of imagination, the rider of the two wheeler, who has borrowed the vehicle from the true owner can be treated as a third party after causing the accident. Coverage under the insurance for a tort-feasor/rider cannot be fastened on the basis that he is the third party. Hence, the Civil Miscellaneous Appeal has to be allowed.

8.In the result, this Civil Miscellaneous Appeal is allowed. No costs. The appellant/Insurance Company is exonerated from the liability and if any amount is deposited by the insurance Company in the MCOP account before the Tribunal, pursuant to the interim order passed by this Court dated 22.06.2016, the same shall be withdrawn by the appellant on appropriate application. Consequently connected Miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

ari

To:

The Motor Accident Claims Tribunal,
Chief Judicial Magistrate Court,
Perambalur.

C.M.A.No.1251 of 2016
and
C.M.P.No.9483 of 2016

GMR(CO)
CSR 21.04.2021