IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 05.10.2020	Pronounced on: 18.11.2020

Coram::

THE HONOURABLE Dr. JUSTICE G.JAYACHANDRAN

C.M.A.No.2086 of 2015
& M.P.No.1 of 2015

M/s.United India Insurance Co. Ltd.,
C-Muva Buildings,
1st Main Road, Anna Nagar East,
Chennai – 600 102. ... Appellant/2nd Respondent

/versus/

1. Thirugnana Sambantham,
S/o.Dhanapal,
No.20, Valayalkara Street,
Perambalur District. ...1st Respondent/Petitioner

2. M.Karthick,
No.G-24, Brindavan Colony,
1st Avenue, 1st Main Road,
Anna Nagar,
Chennai – 600 102. ... 2nd Respondent/1st Respondent

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, praying against the judgment and decree in M.C.O.P.No.227 of 2014, dated 27.03.2015, on the file of the Motor Accidents Claims Tribunal, Chief Judicial Magistrate Court, Perambalur.

For Appellant : Ms.Harini,
for Mr.M.B.Gopalan

For R1 : No appearance

For R2 : not ready notice.

JUDGMENT

(The case has been heard through video conference)

This Appeal is filed by the Insurance Company aggrieved by the award of the Tribunal which has fastened the liability on the Insurance Company to pay a sum of Rs.12,98,199/- to the claimant, for the injury sustained in the accident occurred on 23.01.2013.

2. The main contention of the Appellant/Insurance Company is that the claimant while riding his Hero Honda Splendor bearing registration No.TN-02-AH-8488 owned by one Karthick and insured under the Appellant/Insurance Company, lost his control while passing through Quaid-E-Millath College opposite to Bala Medical on Velacherry Main Road, Medavakkam. He dashed against a pedestrian and fell from the vehicle and got multiple grievous injury including head fracture, nozzle bone fracture, left side hip fracture, cheek bone fracture and jaw dislocation. He was admitted in Global Health City Hospital, Chennai, from 24.01.2014 to 01.02.2014 as inpatient and got discharged. The accident occurred due to his own negligence and therefore, not entitled for any compensation. However, this application filed under Section 163(A) of Motor Vehicle Act was entertained by the Motor Accident Claims Tribunal and Rs.12,98,199/- was awarded payable by the Insurance Company.

3. The Learned Counsel appearing would submit that the claimant has asserted his monthly income as Rs.6,000/- but, he has filed a claim petition under Section 163(A) of Motor Vehicle Act, which is restricted only to the claimants whose income is less than Rs.40,000/- p.a. The claimant himself being the tortfeasor, he is not entitled for any compensation under Section 163(A) of the Motor Vehicle Act, which does not contemplate payment of compensation to tortfeasor. This Section only exempt the claimant proving negligence but does not give right to claim damages for his own fault.

4. The claim petition under Section 163(A) of Motor Vehicles Act, not been considered as per the schedule of the Motor Vehicle Act meant for Section 163(A) and excess award has been granted to the claimant without adhering to the schedule. Therefore, sought for interference in the Tribunal award and set aside the same.

5. Heard the Learned Counsel for the appellant and there is no representation for the respondent in spite of notice served on him.

6. The borrower of the vehicle, who met with an accident cannot claim compensation under Section 163(A) of the Act, if he is the tortfeasor. This principle has been explained in the judgment of the Hon'ble Supreme Court in Ramkhiladi and another Vs. Untied India Insurance Company Limited and another reported in [2020 (1) TN MAC 1(SC)], in the present case, the claimant is the borrower of the vehicle from the 1st respondent

party. The accident has occurred due to his negligence. He has dashed against the pedestrian and sustained multiple grievous injury.

7. The petition is filed under Section 163(A) of Motor Vehicles Act, but it does not satisfy the condition mandated under Section 163(A) of Motor Vehicle Act, which was introduced by way of amendment to give immediate solace to the accident victims, who are from economically weaker section with annual income of less than Rs.40,000/- and in cases, where establishing the proof of negligence to be difficult. This Section does not provide for compensation to the tortfeasor and when there is no Insurance Coverage.

8. In National Insurance Company Limited Vs. P.Balasubramani, this Court vide order dated 11.03.2020, had after referring the judgment of the Hon'ble Supreme Court in Ramkhiladi and another Vs. United India Insurance Company limited and another reported in [2020 (1) TN MAC 1 (SC)], has observed that,

> "13. The Hon'ble Supreme Court in the judgment, cited supra, in unequivocal terms held that in a claim under Section 163-A of the Act, there is no need for the claimants to plead or establish the negligence and/or that the death in respect of which the claim petition is sought to be established was due to wrongful act, neglect or default of the owner of the vehicle concerned. It is also true that the claim petition under Section 163-A of the Act is based on the Principle of 'No Fault Liability'. However, at the same time, the deceased has to be a third party and cannot maintain a claim under Section 163-A of the Act, against the owner/Insurer of the vehicle, which is borrowed by him as he will be in the shoes of the owner and C.M.A.No.2697 of 2017 he cannot maintain a claim under Section 163-A of the Act, against the owner and Insurer of the vehicle. In the case before the Hon'ble Supreme Court, the finding was that the parties are governed by the contract of Insurance and under the contract of Insurance, the liability of the Insurance Company would be qua third party only. Thus the deceased cannot be said to be a third party with respect to the insured vehicle. There cannot be any dispute that the

liability of the Insurance Company would be as per the terms and conditions of the Contract of Insurance. The insurance policy covers the liability incurred by the insured in respect of death 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. Thus Section 147 does not require an Insurance Company to assume risk for death or bodily injury to the owner of the vehicle.

14. Perusal of the judgment, it is crystal clear that the scope of Section 163-A of the Act cannot be expanded, so as to cover borrower of the vehicle, who stepped into the shoes of the registered owner and file claim petition under Section C.M.A.No.2697 of 2017 163-A of the Act. In the event of entertaining such claim petition, undoubtedly, the other provisions namely, Section 147 and other related provisions would get defeated and the object sought to be reached through Special Provision under Section 163-A of the Act, would also be defeated. Thus the fact remains that in all such cases, where a vehicle was borrowed from the registered owner by any person and such vehicle met with an accident and the rider of the vehicle sustained injury or it resulted in death, then no claim petition is entertained under Section 163-A of the Act and even in cases of claim of Personal Accident Policy (not a statutory coverage in terms of Section 147 of the Act), then also the mandatory conditions under the Personal Accident Policy are to be established by the claimant. This being the principles to be followed, this Court is of the considered opinion that in the present case, the claim petition is unsustainable and not entertainable and liable to be rejected."

9. The above said judgment squarely applies to the facts of the present case. The claimant being the borrower of the vehicle, had entered into the shoes of the owner of the

vehicle. Admittedly, he is the tortfeasor and he has sustained injury due to his own negligence and therefore, a petition under Section 163(A) of Motor Vehicle Act., is not maintainable. Even otherwise the award of the Tribunal contrary to the guided principle enumerated under Section 163(A) and Schedule of the Motor Vehicle Act. These provisions are totally floated by the Tribunal without appreciating the provisions of law and the extent of liability of the Insurance Company.

10. Accordingly, the Civil Miscellaneous Appeal is Allowed. The award passed by the Tribunal in M.C.O.P.No.227 of 2014 is set aside. The Appellant/Insurance Company is permitted to withdraw already deposited amount if any. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

bsm
To:

1. The Motor Accidents Claims Tribunal,
   Chief Judicial Magistrate Court,
   Perambalur.

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

C.M.A.No.2086 of 2015
& M.P.No.1 of 2015

ad[co]
srg 28/07/2021