

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.02.2020

C O R A M

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.2566 of 2013

The New India Assurance Company Ltd.
Nagapattinam, represented by its
Branch Manager having his office at
Door No.1718, Neela South Street,
Nagapattinam Town &
District Munsif.

...Appellant/Respondent

Versus

1.Santhi W/o. Late. Ramesh

2.Minor Geethanjali D/o.Ramesh

3.Minor Yashwanth S/o. Late Ramesh

4.Panchavarnam

W/o. Periyasamy

...Respondents/Petitioners

(R2 & R3 are represented by their
Mother and Guardian 1st respondent)

Prayer: Civil Miscellaneous Appeal filed against the order
and decree dated 30.06.2011 made in M.C.O.P.No.179 of 2011 on
the file of the Motor Accident Claims Tribunal and Chief
Judicial Magistrate, Nagapattinam.

For Appellant

: Mrs.Elveera Ravindran

For Respondents 1 to 4

: Mrs.R.T.Sundari

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J U D G M E N T

The Insurance company has filed this appeal against the
award and decree in M.C.O.P.No.179 of 2011 dated 30.06.2011 on
the file of the Motor Accident Claims Tribunal and Chief
Judicial Magistrate, Nagapattinam questioning the liability on
its side.

2. The respondents herein who are the claimants and the
appellant herein who is the respondent before the Tribunal.

3. The facts of case briefly are as under:

On 13.10.2008 at about 3.45pm the deceased Ramesh was riding as billion rider in his motor cycle in bearing registration No. TN 51 E 0796 along with rider Mr. Adhimurugan from Nagapattinam to Velankanni for the business purpose. On the way of driving of motor cycle, the rider suddenly turned the Motor cycle in order to give way to the vehicle coming from opposite direction. In the event of sudden turning, the rider without noticing a pit proceeded the motor cycle on it so that the rider jumped from the vehicle and deceased Ramesh fell down in a ditch along with motor cycle. As a result, the deceased Ramesh sustained blood injuries on his head and all over the body and he was admitted in the hospital. Even the treatment was given to the deceased Ramesh in the hospital, he succumbed to the fatal injuries. Hence, the legal representatives of the deceased Ramesh have filed the claim petition seeking for compensation of Rs.8,00,000/- (Rupees Eight Lakh Only) before the Tribunal by and which they were awarded a sum of Rs.6,31,000/- (Rupees Six Lakh and Thirty One Thousand Only) as compensation with proportionate interest directing the Insurance Company to pay the same to the claimants.

4. Being aggrieved by the award, the Insurance company has filed the present appeal challenging the award passed by the Tribunal.

5.The learned counsel for the appellant would submit that the deceased was the owner of the offending vehicle, who was riding as pillion rider in the motor cycle at the time of the accident. Since owner of the vehicle is not a third party, within the meaning of Section 147 of the Motor Vehicle Act, 1988, the legal heirs are not entitled to get the compensation amount awarded by the Tribunal. However, they are eligible to receive compensation of Rs.1,00,000/- from the Insurance company as per the terms of policy condition. Hence this Court may be pleased to set aside the award passed by the Tribunal.

6. The learned counsel for the claimants/respondents herein would submit that the Tribunal has rightly awarded after taking into consideration entire oral and documentary evidence placed before it. Further, the deceased did not drive his own vehicle and was travelling as pillion rider in the vehicle. Hence, the legal heirs are entitled to get compensation from the Insurance Company. Moreover, as the deceased Ramesh was only breadwinner to his family, the family of the deceased would have to meet their basic needs and there is no contra evidence to disprove the entitlement of the claimants, there is no need to interfere with the award passed by the Tribunal.

7. Heard, the learned counsel for both sides and perused the available documents placed before this Court.

8. On perusal of the award, it is seen that even though the Insurance company has placed reliance of the judgement reported in 2005(1) ACJ page 1 "Dhanraj Vs. New India Assurance Company Ltd. and Another" and 2009 ACJ page 1416 "New India Assurance Company Ltd. Vs. Bhupen Saikia and another", in support of their contention that a claim petition can be filed by the 3rd party against the owner of the vehicle and insurer and the claim cannot be made by the injured/owner of the vehicle or the legal heirs/representatives of the deceased. Since the claimants being the legal heirs/dependents of the deceased, they are not the 3rd party and their claim is not maintainable and has to be dismissed in limini. However, the Tribunal has awarded the compensation relying on the decision reported in CMA(MD) No.69 of 2010 in the case of "Jayanthi Vs. Ramesh and the Oriental Insurance Company Limited, Kumbakonam that in this case the deceased was only travelled as a pillion rider, he was not a rider of motor cycle. Therefore, question of liability on the Insurance company is not at all arise in this case as the deceased was not a third party. Hence, the Insurance company was directed to pay the compensation to the claimants.

9. In view of the above facts and circumstances, this Court is of the considered view that according to the term of contract of insurance, the liability of the insurance was confined to Rs. 1,00,000/- only, covering the risk of owner. Since the deceased was not the third party, the legal representative of the deceased would not be entitled to compensation under Section 163A of the Motor Vehicles Act, 1988, in that event the liability to pay compensation is on the Insurance Company or the owner, as the case may be, as provided under Section 163A of the Motor Vehicles Act, 1988, but if it is proved that the pillion rider is the owner of the motor vehicle, in that case the owner could not himself be a recipient of the compensation has the liability to pay the same is on him and this proposition is absolutely clear on a reading of Section 163A of the Motor Vehicles Act, 1988. Accordingly, the legal representative of the deceased who have stepped into the shoes of the owner of the motor vehicle could not have claimed compensation under Section 163A of the Motor Vehicles Act, 1988. The legal principle emerges that the heir of the owner of the motorcycle cannot maintain a claim under Section 163A of the Motor Vehicles Act, if the policy is only an act policy, with regard of death of owner of the motorcycle in an accident while he was driving as pillion rider in the vehicle. But if the policy in addition to act policy cover the risk of owner and for covering the risk of owner an additional premium is paid covering the risk of owner then the Tribunal is required to go into the question whether a claim is maintainable under Section 166 of the Motor Vehicles Act,

1988, as a just compensation is required to be paid and to go into the policy condition whether the policy cover the risk of the deceased and in case of owner whether the additional premium has been paid. However, under the present facts and circumstances of the case, taking into consideration that the deceased was the owner and pillion rider of the vehicle and hence he was not a third party and hence any claim under Section 163A of the Motor Vehicles Act, 1988, is not maintainable. Hence finding recorded by the Tribunal is not sustainable by law and hence is hereby set aside. As discussed above since the claim under Section 163A of the Motor Vehicles Act, 1988, is not maintainable to the deceased who was the owner of the vehicle and hence for maintaining the claim under Section 166 of the Motor Vehicles Act, 1988.

10. In view of the above observation and discussion, the Tribunal is directed to pay compensation of Rs.1,00,000/- to the claimants/respondents herein immediately as per the terms and conditions of the policy.

11. In the result, the award passed by the Tribunal in M.C.O.P. No.179 of 2011 is set aside and accordingly, the appeal is disposed of with the above direction. There shall be no order as to costs.

Sd/-
Assistant Registrar (CCC)

// True Copy //

Sub Assistant Registrar

lbm

To

1. Motor Accident Claims Tribunal
and Chief Judicial Magistrate, Nagapattinam.
2. The Section Officer,
V.R.Section, High Court, Madras.

+1CC to Mrs. Elveera Ravichandran, Advocate, SR 13188

C.M.A.No.2566 of 2013

SSV (CO)
PSI 19/12/2020