

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.03.2020

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

C.M.A.No.381 of 2015

and

M.P.Nos.1 and 2 of 2015

National Insurance Co. Ltd.,  
No.751, Anna Salai,  
Chennai - 2.

... Appellant/2<sup>nd</sup> Respondent

Vs.

1.S.Chitirai Pandian

2.C.Chandra

3.N.Priyadharsini

... Respondents 1 & 2/Claimants

... 3<sup>rd</sup> Respondent/1<sup>st</sup> Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award and decree dated 27.08.2014, made in M.C.O.P.No.2224 of 2011, on the file of Motor Accident Claims Tribunal, Chief Court of Small Causes, Chennai.

For Appellant : Mr. S.Arun Kumar

For RR1 & 2 : M/s.Ramaya V. Rao

J U D G M E N T

The Civil Miscellaneous Appeal is filed against the judgment and decree dated 27.08.2014 passed in M.C.O.P.No.2224 of 2011.

2. The accident occurred on 29.03.2010 at about 17.00 hours at Poonamallee High Road, opposite to Maduravoyil Police Station. When the deceased was riding the first respondent's/third respondent herein motor cycle bearing Registration No.TN 09 BA 8119 at Poonamallee High Road, opposite to Maduravoyil Police Station, at that time, an unknown School Van came from behind in a rash and negligent manner hit the motor cycle of the deceased thereby the deceased sustained grievous injuries. On account of the fatal and multiple injuries all over the body, the deceased died after admittance in the hospital.

3. The learned counsel appearing on behalf of the appellant mainly raised a question regarding the maintainability of the claim petition under Section 163-A of the Motor Vehicles Act. Perusal of the claim petition itself reveals that the accident occurred in respect of the unknown vehicle and further the deceased was not a owner and he has borrowed the vehicle from the third respondent herein, who is the owner of the vehicle. Thus the deceased stepped into the shoes of the owner of the vehicle and therefore, there is no coverage of policy. Thus the claim petition under Section 163-A of the Motor Vehicles Act is not maintainable.

4. The counter filed by the appellant-Insurance Company reveals that the case on hand is hit and run. Even according to the claimants at the relevant point of time, the deceased Duraipandian was riding the motor cycle bearing Registration No.TN-09-BA-8119 through Poonamallee High Road opposite to Madhuravoyal Police Station and at that time an unknown School Van, which was driven by its driver rashly and negligently dashed against the motor cycle in which the deceased was riding. In result, the deceased suffered fatal injuries and died in the hospital. Thus the accident was caused by an unknown van, therefore, the claimants are not entitled to claim any compensation either under Section 163-A of the Motor Vehicles Act or under any other provision.

5. Though the ground has been raised as a defence in the counter statement filed by the appellant, the Tribunal has failed to adjudicate the maintainability of the claim petition, contrarily, the Tribunal proceeded based on the coverage of policy as well as the quantum of compensation. Thus, there is no adjudication with respect to the maintainability of the claim petition under Section 163-A of the Act. However, the averments in the counter filed by the Insurance Company is recorded by the Trial Court in the Judgment. Thus, this Court is of the considered opinion that the Tribunal has committed an error by not considering the maintainability of the claim petition as preliminary issue.

6. In this regard, the learned counsel appearing on behalf of the appellant cited the judgment of the Hon'ble Supreme Court of India in the case of Ningamma and Another vs. United India Insurance Co. Ltd [2009 ACJ 2020], wherein in paragraphs 18 and 19, it has been held as under:-

"18. In the case of Oriental Insurance Co. Ltd. vs. Rajni Devi [(2008) 5 SCC 736 : (2008) 3 SCC (Cri) 67] wherein one of us, namely, Hon'ble S.B. Sinha, J. was 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 Oriental Insurance Co. Ltd. case [(2008) 5 SCC 736 : (2008) 3 SCC (Cri) 67] 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 decision in Oriental Insurance Co. Ltd. case [(2008) 5 SCC 736 : (2008) 3 SCC (Cri) 67] 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 an 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."

7. The Apex Court held that Section 163-A of the Motor Vehicles Act, cannot be said to have any application in respect of an accident, wherein the owner of the motor vehicle himself is involved. The liability under Section 163-A of the MVA is on the owner of the vehicle. So a person cannot be both, a claimant and also a recipient, with respect to claim. Thus, the heirs of the deceased could not have maintained a claim in terms of Section 163-A of the Motor Vehicles Act.

8. In the present case also the claimant borrowed the vehicle from the owner and therefore he stepped into the shoes of the owner of the vehicle and therefore, claim petition under Section 163-A of the Motor Vehicles Act, is not entertainable. The Tribunal has not adjudicated this vital issue, despite the fact that there is a force in this regard and the counter filed by the appellant/Insurance Company also has raised defence.

9. The recent Judgment of Hon'ble Supreme Court in the case of Ramkhiladi and Another Vs. United India Insurance Co. Ltd and Another [2020 (1) TN MAC 1 (SC)], elaborately discussed the scope of claim petition under Section 163 (A) of the Motor Vehicles Act. Undoubtedly, the Special Provision cannot be read in isolation and the Apex Court considered Sections 147, 166 and 163-A of the Motor Vehicles Act. Thus the Special Provision is to be read conjointly and in consonance with the object, purpose as well as the intention of the Legislature.

10. In the event of interpreting any Special Provision in isolation to the other provisions of the Statute, then the very object would be defeated and therefore, the Courts cannot make an interpretation of a Special Provision, which is otherwise intended to grant certain benefits in respect of grant of compensation in the event of not establishing negligence. Thus, this Court is of the considered opinion that, even the Personal Accident Coverage cannot be considered in certain cases, where the victim is not the registered owner of the vehicle. Three conditions are required even under Personal Accident Policy (which is not a statutory coverage in terms of Section 147 of the Act.). The said three conditions are mandatory, so as to avail compensation under the Personal Accident Policy (not a

statutory coverage in terms of Section 147 of the Act). The conditions are:-

(a) the owner-driver is the registered owner of the vehicle insured;

(b) the owner-driver is the insured named in the policy;

(c) the owner-driver holds an effective driving license, in accordance with the provisions of Law.

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.

12. This Court is of the considered opinion that the Insurance Company as well as the Policy Holders are bound by the terms and conditions of the contract agreed between the parties. In the event of superseding the terms of contract, then the very legality of the Law of Contract is sacrificed under the provisions of the Indian Contract Act, which is unacceptable and therefore, in respect of the contract, Courts are bound to consider the terms and conditions and the binding clauses between the parties.

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 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 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.

15. Accordingly, the judgment and decree dated 27.08.2014 passed by the learned Chief Judge, Small Causes Court-cum-Motor Accidents Claims Tribunal, Chennai in M.C.O.P.No.2224 of 2011 is

quashed and consequently, C.M.A.No.381 of 2015 stands allowed. However, there shall be no order as to costs. Consequently connected miscellaneous petitions are closed.

16. The amount deposited by the appellant/Insurance Company, if any, in the credit of M.C.O.P.No.2224 of 2011 on the file of the Chief Court of Small Causes-cum-Motor Accidents Claims Tribunal, Chennai, is permitted to be withdrawn by the appellant/Insurance Company, by filing an appropriate application.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

Rsi

To

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

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

+1cc to Mr.S.Arunkumar, Advocate, S.R.No. 20367

C.M.A.No.381 of 2015

and

M.P.Nos.1 and 2 of 2015

RSI (CO)  
GN(06/10/2020)

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