



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 30.11.2020

PRONOUNCED ON: 03.12.2020

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THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

C.M.A.NO.669 OF 2015

&

M.P.NO.1 OF 2015

The Branch Manager,
M/s.New India Assurance Co Ltd.,
Vellore,
Vellore District.

... Appellant/2nd Respondent

/versus/

1. Thiru.Rajaram
S/o.Govindaraj,
No.16, 4th Street, Lalpetai,
Pondy - 605 008.
Now residing at,
No.2, New Street Cross Street,
Cheyyar - 1.

... 1st Respondent/Petitioner

2. Miss. M.Kriethika @ Gunasundarai,
No.18, Karthik Nivas,
4th Cross, Kurinchi Nagar,
Pondicherry.

... 2nd Respondents/1st Respondent

Prayer:

Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicle Act, against the award and decree passed in M.C.O.P.No.15 of 2012 on 28.04.2014 on the file of the Learned Motor Accident Claims Tribunal (Subordinate Judge) at Cheyyar.

For Appellant : Mr.J.Chandran

For R1 : Mr.Magesh

For R2 : No appearance



J U D G M E N T

(The case has been heard through video conference)

This Appeal is filed under section 173 of the Motor Vehicle Act by the Insurance Company raising an interesting question of law, whether the Insurance Company is liable to indemnify the insurer/owner of the vehicle, who is the wife of the claimant and when the said claimant himself is the tortfeasor.

2. The facts of the case is that, on 25.11.2011, when the claimant Rajaram was returning from Chennai to Pondicherry driving the Maruthi Suzuki Alto LXI Car bearing registration No.PY-01-AE-7389, near Thenvanakambadi Village on the Vandavasi to Thellar Road, hit against a palmyrah on the left side of the road. The claimant, who was on the wheels sustained injury and his friend Vinod travelling along with him died.

3. In the accident, the claimant sustained tiny chip fracture of the outer cortex of left frontal bone. (left forehead), liver laceration Grade III, Hemangioma involving segment VII of the liver and fracture of left big toe proximal phalanx. He was admitted in Sri Ramachandra Hospital, Chennai and recovered. The F.I.R was registered based on the complaint given by one Krishnamoorthy, the brother of the deceased Vinod. Criminal case was registered against the claimant for offences under section 279, 377 and 304 (A) of I.P.C.

4. The Claim petition under section 166 of the Motor Vehicles Act was filed against the vehicle owner and the insurer of the vehicle for compensation of Rs.5,00,000/-. The insured/vehicle owner remained exparte. The insurer resisted the claim primarily on the ground that, the Insurance Company is not liable to pay compensation to the claimant, who being the tortfeasor and not a third party or paid employee of the insured.

5. In support of this submission, the following judgments were relied.

(i). Tarabai and others -vs- Rahul Trading & Finance Co and others reported in 2004 ACJ 1278 and, (ii). United India Insurance Company, Chennai -vs- Ravi & Another reported in 2010 (5) MLJ 406 were relied.

6. Based on the evidence of the claimant and the doctor, who gave the disability certificate (Ex.P.6) and 9 documents marked as Exhibits, the Tribunal had awarded a sum of Rs.3,04,600/- as



7. The Learned Counsel for the Appellant/Insurance Company emphasized on the fact that, the claim petition is filed under section 166 of the Motor Vehicle Act, which can be invoked only by a Third party claimant. Admittedly, the accident occurred due to the negligence of the claimant and he is the husband of the vehicle owner. The premium collected for own damages to the vehicle and third party risk will not cover the driver of the vehicle, who happen to be the tortfeasor. The dictum of the Courts that a person, who is responsible for the accident cannot claim compensation from the insurer either under section 163(A) or under section 166 of the Motor Vehicle Act, not followed by the Tribunal.

9. From the evidence, the following facts are established:

1. The claimant is the Tortfeasor.
2. The vehicle owner/insured is the wife of the tortfeasor.
3. The vehicle is covered with package policy. Inclusive of own damages and limited liability for owner-driver.

11. The claimant is not a third party. As a driver of the vehicle, he has to be treated as borrower of the vehicle entering into the shoes of the owner. Now, on analysing the



policy Ex.P-7, which is a package policy covers the own damages and risk of the owner/driver, the claim by the driver, who has borrowed the vehicle has to be covered with risk. However, the peculiar fact of this case is that, the driver is the tortfeasor. The Insurance Policy is to indemnify the insured. The claimant, who enters the shoes of the owner should to be considered as the owner of the vehicle.

12. Some of the judgments of this Hon'ble Court and the Apex Court are listed below for better clarification of the above synthesis.

(i). In Oriental Insurance Company - vs - Kaliya Pillai reported in 2003 ACJ 1021, on 30 October, 2002, the Division Bench of the Madras High Court, held that,

"The deceased was none else than the driver of the tractor and the trailer. In such a circumstance, he being a tort-feasor and responsible for the accident, he cannot claim compensation for the injuries, likewise his legal heirs also are not entitled for compensation from the Insurance company by invoking the provisions of the Motor vehicles Act. In this regard, it is relevant to refer a Division Bench decision of this Court New India Assurance Company Ltd., -vs- Meenal, reported in 1993 A.C.J. 522. After referring to the earlier decisions of this Court and the other High Courts as well as the Supreme Court, the Division Bench (K. Venkataswamy and A. Abdul Hadi, JJ) has held that inasmuch as the deceased was himself a tort-feasor, hence the claimants cannot maintain the claim petition for any compensation from the owner of the vehicle; consequently then cannot have any claim against the insurance company. Similar view has been reiterated by the subsequent Division Bench of this Court (consisting of A. Abdul Hadi, J. and myself (P. Sathasivam, J.) in the case of The Oriental Insurance Company Ltd., v. Pandurangam and others, reported in 1997-1-L.W.59."



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(ii). In *Munusamy Versus The Oriental Insurance Company Limited* reported in 2012 (1) ACC 743, has held that,

"On 30.03.2003 at about 4 pm, when the claimant was driving the lorry bearing Registration No. TDL 6557 with a load of casurina wood from Kumuli Village to Madurantagam, in order to avoid hitting a child who crossed the road suddenly, he applied brake and lost control of the vehicle. Resultantly, the claimant hit a tamarind tree on the road side. In the impact, the engine of the lorry caught fire and burnt resulting in injuries to the claimant on his face, leg and hand. He was immediately taken to Madurantakam Government Hospital where he took treatment as in patient till 25.05.2003. Therefore, for the injuries sustained by him, he filed the claim petition.

3. The insurance company resisted the claim made by the claimant on the ground that the claimant himself is the owner of the lorry and he had driven the vehicle and sustained injuries. As the petitioner is not a third party, but owner of the vehicle, the claim petition is not maintainable. Further, the insurance policy issued to the petitioner does not cover the injuries sustained by him. When the petitioner himself is at fault, he cannot claim any compensation for his own fault. Further, as per the policy condition, for his own damage, claim will not be entertained in the policy. Moreover, there is a delay of 55 days in lodging FIR before the police which gives suspicion about the alleged accident.

4. The Court below dismissed the claim petition on the ground that the claimant himself is the owner of the lorry, he himself driven it and met with an accident by dashing against a tamarind tree and sustained injuries. Inasmuch as the petitioner is not a third party as specified in the policy and there is no separate amount paid by the petitioner towards the policy to cover the owners damage, the claim petition is not maintainable and accordingly dismissed it."



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the borrower of the vehicle or his legal representatives are not entitled to compensation from the insurer under the Act. It is submitted that the deceased in the present case has stepped into the shoes of the owner and therefore not entitled to any third party compensation from the insured vehicle; and

(vi) That in the case of *Dhanraj vs. New India Assurance Co. Ltd.* Reported in (2004) 8 SCC 553, it is held by this Court that an insurance policy covers the liability incurred by the insured in respect of death of 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. It is further held that Section 147 does not require an insurance company to assume risk for death or bodily injury to the owner of the vehicle.

In the case of *Ningamma (supra)*. In that case, the deceased was driving a motorcycle which was borrowed from its real owner and met with an accident by dashing against a bullock cart i.e. without involving any other vehicle. The claim petition was filed under Section 163A of the Act by the legal representatives of the deceased against the real owner of the motorcycle which was being driven by the deceased. To that, this Court has observed and held that since the deceased has stepped into the shoes of the owner of the vehicle, Section 163A of the Act cannot apply wherein the owner of the vehicle himself is involved. Consequently, it was held that the legal representatives of the deceased could not have claimed the compensation under Section 163A of the Act. Therefore, as such, in the present case, the claimants could have even claimed the compensation and/or filed the claim petition under Section 163A of the Act against the driver, owner and insurance company of the offending vehicle i.e. motorcycle bearing registration No.RJ 29 2M 9223, being a third



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party with respect to the offending vehicle. However, no claim under Section 163A was filed against the driver, owner and/or insurance company of the motorcycle bearing registration No.RJ 29 2M 9223. It is an admitted position that the claim under Section 163A of the Act was only against the owner and the insurance company of the motorcycle bearing registration No.RJ 02 SA 7811 which was borrowed by the deceased from the opponent-owner Bhagwan Sahay. Therefore, applying the law laid down by this Court in the case of Ningamma (supra), and as the deceased has stepped into the shoes of the owner of the vehicle bearing registration No.RJ 02 SA 7811, as rightly held by the High Court, the claim petition under Section 163A of the Act against the owner and insurance company of the vehicle bearing registration No.RJ 02 SA 7811 shall not be maintainable."

13. The principle of law underlined in all these cases referred in that, the owner of the vehicle is not entitled for claiming compensation, if no additional premium is paid. Even if he has paid the additional premium, being the tortfeasor, he is not entitled for the compensation, as per the terms of Own Damage, Personal Accident Cover or Limited Liability cover. In the present case, it is a package policy. The owner-cum-driver being the tortfeasor not covered under any of these three heads.

14. Therefore, this Court finds award of the Tribunal is liable to be set aside.

15. Accordingly, the Civil Miscellaneous Appeal is Allowed. No order as to costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

bsm



To:-

1. The Motor Accident Claims Tribunal
(Subordinate Judge), Cheyyar.

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

+1cc to Mr.J.Chandran, Advocate, S.R.No.39158

C.M.A.No.669 of 2015
& M.P.No.1 of 2015

KJ(CO)
CS/23/08/2021