IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 03.08.2020	Pronounced on: 06.08.2020

CORAM:

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

C.M.A.No.1940 of 2016
and
C.M.P.No.14132 of 2016

Branch Manager,
United India Insurance Company Ltd.,
having its Office at No.29-C, First Floor,
C.M.A.Road, Kadharpet,
Vaniyambadi 635 753. .. Appellant/2nd Respondent

/versus/

1.Dhanalakshmi

2.S.M.Babu

3.Janani ...Petitioners/Respondents 1-3

4.K.Vasu ..4th Respondent/1st Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the award and decree dated 20.01.2016 made in M.C.O.P.No.361 of 2014 on the file of the Motor Accidents Claims Tribunal(Special District Judge), Krishnagiri.

For Appellant : Mr.D.Bhaskaran

For R1 to R3 : Mr.Sivakumar

For R4 : No appearance

J U D G M E N T

(The case has been heard through video conference)

This appeal by the Insurance Company is pegged to a short question whether a tort-feasor in the motor accident case also happen to be the owner-cum- driver, can get compensation under

Section 163 A or under Section 166 of the Motor Vehicles Act,1988 (herein after referred to "the Act").

2.On 26/12/2013 midnight, the deceased Vickraman was driving his Alto Maruthi car bearing Registration No.TN-21-J-7971 from Gungarahalli village in Bommidi to Dharmapuri town. His car capsized while trying to avert the huge excavation in the middle of the road dig for constructing culvert. At the time of accident, there were 4 occupants in the car including the owner-cum-driver Vickraman. Due to the injuries, Vickraman was taken to the hospital, but he succumbed to the injuries. Yet another occupant also died while two others survived with injuries. First Information Report was registered against Vickraman for rash and negligent driving.

3.At the time of his death, Vickraman was 23 years old, pursuing his B.E., (Mechanical Engineering) in Anna University. The Alto Car was purchased by him from one Vasu, S/o Vijayakumar. The RC(Registration Certificate) stood in the name of Vickraman after name transfer. The Insurance Cover was in force and valid at the time of accident. However, the Insurance Policy stood in the name of the erstwhile owner.

4.Claim petition M.C.O.P No.361 /2014 before the Motor Accident Claims Tribunal, Special District Judge, Krishnagiri was filed claiming compensation of Rs.30,00,000/- (Rupees thirty lakhs only) by the mother, father and sister of the deceased Vickraman. Based on details in the insurance policy of the vehicle, Vasu the erstwhile owner and the insurance company were arrayed as respondents.

5.The first respondent Vasu, in his counter has brought to the notice of the Court that he was not the owner of the vehicle at the time of accident. He sold the vehicle to Vickraman on 13/04/2013 and transferred the RC (Registration Certificate) to his name on 12/06/2013. The purchaser of the vehicle has not informed the name transfer to the Insurance Company to effect corresponding change in the Insurance Policy. He is not a necessary party, since the ownership has changed. As a owner, the accident victim alone is responsible for the acts connected with the use of the vehicle.

6.The second respondent-Insurance Company in its counter contented that, the insurance policy for the car Maruthi Alto TN-21-J-7971 was issued in the name of the first respondent Vasu for the period from 22/02/2013 to 21/02/2014. Subsequently, the vehicle has been sold to the accident victim Vickraman and RC (Registration Certificate) of the said car was transferred to the name of the deceased on 12/06/2013. The transfer of ownership was not intimated to the insurance company by the purchaser. On the date of accident, there was no contract of insurance between the deceased and the insurance company. Further, it was also contented that, the owner of the car not covered under the said policy and no premium paid in this regard. Being the owner-cum-driver and the tort-feasor, no compensation is payable. Therefore, the claim petition is not maintainable against them.

7.Initially, the claim petition was filed under Section 166 of the Motor Vehicles Act, 1988 for a compensation of Rs.30 lakhs. Later, on petition, it was amended as Section 163-A of the Act for a compensation of Rs.8 lakhs. The Tribunal, after considering the material facts and evidence placed before it, awarded a sum of Rs.4,43,000/- with interest at the rate of 7.5% if deposited within 60 days and thereafter 9% p.a.

8. The award amount was apportioned among the claimants as below:-

First claimant (Mother)	Rs.2,00,000/-
Second claimant (Father)	Rs.1,43,000/-
Third claimant (Sister)	Rs.1,00,000/-

9.The Insurance Company, aggrieved by the above award is before this Court. It is contented by the appellant, that the Tribunal has failed to consider the fact that the owner-cum-driver cannot take recourse to Section 166 or 163-A of the Act. These provisions are meant for third party liability. If the insured himself the tort-feasor, unless extra premium for Personal Accident(PA) is paid, the owner- cum-driver cannot claim any compensation. In the instant case, though in the counter, it was contented that no premium is paid for owner's personal accident, on verification of the record, it is found that an extra premium of Rs.100/- is paid towards compulsory Personal Accident (PA) for owner. But, the victim has failed to intimate the change of ownership to the insurance company. Therefore the claimants are not eligible even for the fixed compensation of Rs.2,00,000/- payable under personal accident (PA) cover.

10.The learned counsel for the respondents would state that, if the insurance company harp on the lapse of non-effecting name transfer after purchase and transfer in RC book, then the claimants have to be treated as third party and the insurance company is liable to pay the compensation as awarded by the Tribunal. If it accept that the vehicle owner is entitled for the compensation, in view of extra premium paid for PA, then, they are liable to pay the fixed compensation of Rs.2,00,000/-. Either way they are liable to pay compensation.

11.Heard the learned counsel appearing for the appellant and the learned counsel appearing for respondents 1 to 3 and perused the records.

12.In Bajaj Allianz General Insurance Co. Ltd., -vs- C.Ramesh reported in [2014 ACJ (2) 721], it is held that,

> "99. When an owner-cum-driver takes a personal accident cover, an optional contract of insurance, and pays an additional premium, he is entitled to claim compensation, as per the terms and conditions of the policy and such compensation shall be payable directly to the insured or to his/her legal representatives, as the case may be, whose receipt shall be the full discharge in respect of the injury to the insured. However, this cover is subject to, (a)the owner-driver is the registered owner of the vehicle insured herein; (b)the owner-driver is the insured named in this policy; and (c)the owner-driver holds an effective driving licence, in accordance with the provisions of Rule 3 of the Central Motor Vehicles Rules, 1989, at the time of the accident."

13.For any motor vehicle, the Registration Certificate (RC) is the proof of ownership. Insurance Cover is only an ancillary document. Any omission or lapse on the part of the owner to intimate the change of ownership cannot be a ground to deprive the victims from getting compensation under personal accident(PA) cover, provided he satisfies the other conditions. As per RC book Ex.R-1, Vickraman was the owner of the vehicle at the time of the accident. The insurance policy copy is marked as Ex.R-2. The insurance company has collected extra premium of Rs.100/- towards personal accident(PA) for owner.

14.Recently in National Insurance Company Ltd., vs. Rani the learned Judge of this Court, on considering the dictum laid down by the Hon'ble Supreme Court in Ningamma and another v. United India Insurance Co.Ltd., reported in [(2009) ACJ 2020)] and Ramkhiladi and another v. The United India Insurance Company and another reported in [2020(1) TNMAC (1) SC] had extensively discussed the scope of Sections 147, 163A and 166 of the Motor Vehicles Act, 1988. The principle that if the owner of the vehicle is the tort-feasor, he cannot be the claimant, unless he had paid the additional premium for personal accident and also should establish the compliance of three mandatory conditions namely,

(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.

15.It is true that, the accident victim Vickraman, the owner-driver is not the insured name in the policy. The used car was purchased by Vickraman in the month of April, 2013 and name transfer in the RC (Registration Certificate) was effected in the month of June, 2013. The present owner is bound to inform the insurance company about the transfer of ownership and necessary change in the policy. The said lapse has to be condoned when the other requirements are substantially complied.

16.Therefore, being a beneficial piece of legislation, this Court is of the opinion that, lapse to intimate the insurance company about the ownership transfer will not exonerate the insurance company from its liability from paying the personal accident (PA) compensation. Yet another reason for holding so, is, as far as motor vehicle insurance is concerned it is the vehicle which is insured. The ownership of the vehicle gets significance only when question whether it is PA claim or third party claim arise. When evidence is clear about the ownership, even if the insurance policy stands in a different name, the ownership has to be determined based on the registration certificate (RC).

17.As a result, this Civil Miscellaneous Appeal is partly allowed. The claimants, who are the dependants of the accident victim are entitled for the compensation under PA policy, since extra premium of Rs.100/- has been collected by the Insurance

Company. As per the terms of the policy, the insured is entitled for Rs.2,00,000/- as compensation in case of death. Therefore, the award of the Tribunal is reduced from Rs.4,43,000/- to Rs.2,00,000/- with 7.5% interest from the date of filing the claim petition, till the date of payment.

The said award of Rs.2,00,000/- shall be apportioned as below:-

1st claimant (Mother)	Rs.1,00,000-00
2nd claimant (Father)	Rs.50,000-00
3rd claimant (Sister)	Rs.50,000-00

The award amount with interest at 7.5% shall be deposited within a period of 8 weeks from today and same shall be withdrawn by the respondents as per the proportion stated above. If any amount already deposited and it is more than the award as modified in this appeal, the appellant shall withdraw the excess amount. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

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To:

1.The Motor Accident Claims Tribunal,
Special District Judge, Krishnagiri.

2.The Section Officer,
VR Section, Madras High Court.

+1cc to Mr.C.Prabakaran, Advocate SR.26310

C.M.A.No.1940 of 2016
and
C.M.P.No. 14132 of 2016

LN(CO)
CB(07/10/2020)