IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.01.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.NO.2264 OF 2016
AND
C.M.P.NO.15991 OF 2016

M/s.TATA AIG General Insurance Company Limited,
Rep. By its Branch Manager,
Jaya Enclave, 3rd Floor,
No.1057, Avinashi,
Coimbatore – 641 018. ... Appellant/2nd Respondent

.Vs.

1.K.Suresh ... 1st Respondent/Petitioner

2.Sundaram ... 2nd Respondents/1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 12.08.2015 made in M.C.O.P.No.729 of 2014 on the file of Motor Accidents Claims Tribunal, Special Sub Court, Dharmapuri.

For Appellant : Ms.C.Harini
for M/s.N.Vijayaraghavan
For Respondents : No appearance

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant/Insurance Company challenging the award dated 12.08.2015 made in M.C.O.P.No.729 of 2014 on the file of Motor Accidents Claims Tribunal, Special Sub Court, Dharmapuri.

2.The appellant/Insurance Company is the 2nd respondent in M.C.O.P.No.729 of 2014 on the file of Motor Accidents Claims Tribunal, Special Sub Court, Dharmapuri. The 1st respondent filed the said claim petition claiming a sum of Rs.5,00,000/- as compensation for the injuries sustained by him in a road accident that took place on 20.01.2012.

3.According to the 1st respondent, on the date of the accident i.e. on 20.01.2012, while the he was riding in the motorcycle along with his friend returning from Tirupattur, at about 19.30 hours, the 1st respondent was driving the motorcycle on Kaverpattinam - Palacode Road. Due to bad condition of the road and also pits in the road for laying pipe line, the 1st respondent lost his balance and the vehicle fell in the pit in the road. Due to the impact the 1st respondent and the pillion rider fell down and sustained injuries. Therefore, the 1st respondent has filed above claim petition claiming compensation against the 2nd respondent as well as appellant.

4.The 2nd respondent/owner of the motorcycle remained ex parte before the Tribunal.

5.The appellant/Insurance Company filed counter statement denying the averments made by the 1st respondent and contended that the 1st respondent did not possess valid driving license at the time of accident. The 1st respondent and the pillion rider did not take any precaution for their personnel safety while riding vehicle. Thus, the said vehicle was used in contravention of the provisions of the MV Act. The 1st respondent has to prove that the owner of the said vehicle had paid any additional premium towards the risk of the 1st respondent. It is further contended that the 1st respondent is not a third party and the claim is not maintainable. Therefore, the appellant/Insurance Company is not liable to pay any compensation to the 1st respondent.

6.Before the Tribunal, the 1st respondent examined himself as P.W.1 and one Dr.S.Krishnakumar was examined as P.W.2 and marked eleven documents as Exs.P1 to P11. No oral and documentary evidence was let in on the side of the appellant/Insurance Company

7.The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent riding by the rider of the motorcycle belonging to the 2nd respondent and directed the 2nd respondent as well as the appellant/Insurance Company being insurer of the said vehicle to jointly and severally pay a sum of Rs.1,81,500/- as compensation to the 1st respondent.

8.Against the said award dated 12.08.2015 made in M.C.O.P.No.729 of 2014, granting compensation to the 1st respondent, the appellant/Insurance Company has come out with the present appeal.

9.The learned counsel appearing for the appellant/Insurance Company contended that the 1st respondent who was rider of the motorcycle at the time of accident was not covered by policy issued by the appellant. The appellant is not liable to pay compensation for the injuries sustained by the 1st respondent, as per policy issued under Section 147 of Motor Vehicles Act, 1988. The appellant has taken a specific stand that the rider of the motorcycle is not covered under the policy. The Tribunal has not given any finding with regard to the same. In support of the contention, the learned counsel relied on the following judgments (i) "2009 ACJ 998" [New India Assurance Co. Ltd., Vs. Sadanand Mukhi and others].

> "14.It is not a case where even Section 163-A of the Act was resorted to. Respondents filed an application under Section 166 of the Act. Only an act policy was taken in respect of the motor vehicle. Submission of the learned counsel that being a two wheelers, the vehicle was more prone to accident and, therefore, whosoever becomes victim of an accident arising out of the use thereof would come within the purview of the term "a person" as provided for in Section 147 of the Act, in our opinion, is not correct.
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> 15. Contract of insurance of a motor vehicle is governed by the provisions of the Insurance Act. The terms of the policy as also the quantum of the premium payable for insuring the vehicle in question depends not only upon the carrying capacity of the vehicle but also on the purpose for which the same was being used and the extent of the risk covered thereby. By taking an `act policy', the owner of a vehicle fulfils his statutory obligation as contained in Section 147 of the Act. The liability of the insurer is either statutory or contractual. If it is contractual its liability extends to the risk covered by the policy of insurance. If additional risks are sought to be covered, additional premium has to be paid. If the contention of the learned counsel is to be accepted, then to a large extent, the provisions of the Insurance Act become otiose. By reason of such an interpretation the insurer would be liable to cover risk of not only a third party but also others who would not otherwise come within the purview thereof. It is one thing to say that the life is uncertain and the same is required to be covered, but it is another thing to say that we must read a statute so as to grant relief to a person not contemplated by the Act. It is not for the court, unless a statute is found to be unconstitutional, to consider the rationality

thereof. Even otherwise the provisions of the Act read with the provisions of the Insurance Act appear to be wholly rational.

16.Only because driving of a motor vehicle may cause accident involving loss of life and property not only of a third party but also the owner of the vehicle and the insured vehicle itself, different provisions have been made in the Insurance Act as also the Act laying down different types of insurance policies. The amount of premium required to be paid for each of the policy is governed by the Insurance Act. A statutory regulatory authority fixes the norms and the guidelines.

17. Keeping in view the aforementioned Parliamentary object, let us consider the fact of the present case so as to consider as to whether the insurer is liable to pay the amount of compensation in relation to the accident occurred by use of the vehicle which was being driven by the son of the insured.

18.We may, for the said purpose, notice certain decisions covering different categories of the claims.

In United India Insurance Co. Ltd. v. Tilak Singh, (2006) ACJ 1441 (SC), this Court considered the provisions of Motor Vehicles Act, 1939 as also 1988 Act and inter alia, opined that insurance company would have no liability towards the injuries suffered by the deceased who was a pillion rider, as the insurance policy was a statutory policy which did not cover the gratuitous passenger.

In Oriental Insurance Co. Ltd. v. Jhuma Saha, [(2007) 9 SCC 263], it was held :-

10. The deceased was the owner of the vehicle. For the reasons stated in the claim petition or otherwise, he himself was to be blamed for the accident. The accident did not involve motor vehicle other than the one which he was driving. The question which arises for consideration is that the deceased himself being negligent, the claim petition under Section 166 of the Motor Vehicles Act, 1988

would be maintainable.

> 11.Liability of the insurer Company is to the extent of indemnification of the insured against the respondent or an injured person, a third person or in respect of damages of property. Thus, if the insured cannot be fastened with any liability under the provisions of the Motor Vehicles Act, the question of the insurer being liable to indemnify the insured, therefore, does not arise."

It was furthermore held :-

> 13.The additional premium was not paid in respect of the entire risk of death or bodily injury of the owner of the vehicle. If that be so, Section 147(b) of the Motor Vehicles Act which in no uncertain terms covers a risk of a third party only would be attracted in the present case."

The matter came up for consideration yet again in Oriental Insurance Co. Ltd. v. Meena Variyal [(2007) 5 SCC 428] wherein it was observed :-

10. ...As we understand Section 147(1) of the Act, an insurance policy thereunder need not cover the liability in respect of death or injury arising out of and in the course of the employment of an employee of the person insured by the policy, unless it be a liability arising under the Workmen's Compensation Act, 1923 in respect of a driver, also the conductor, in the case of a public service vehicle, and the one carried in the vehicle as owner of the goods or his representative, if it is a goods vehicle. It is provided that the policy also shall not be required to cover any contractual liability.

(ii) "2009 ACJ 2020" [Ningamma and another Vs. United India Insurance Co. Ltd.,].

13.In the light of the aforesaid submissions, the question that falls for our consideration is whether the legal representatives of a person, who was driving a motor vehicle, after borrowing it from the real owner meets with an accident without involving any other vehicle, would be entitled to compensation under Section 163-A of MVA or under any other provision(s) of law and also whether the insurer who issued the insurance policy would be bound to indemnify the deceased or his legal representative? Before dwelling further, it would be useful to discuss the relevant paras of Section 163-A and 166 of the MVA applicable in the present case.

18. In the case of Oriental Insurance Company Ltd. v. Rajni Devi and Others, (2008) 5 SCC 736, wherein one of us, namely, Hon'ble Justice S.B. Sinha is 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 the said decision 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 aforesaid decision 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 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.

10.Though 1st respondent entered appearance through counsel, there is no representation on behalf of him at the time of hearing the appeal.

11.Heard the learned counsel appearing for the appellant/Insurance Company and perused all the materials on record.

12.The 1st respondent has filed the claim petition claiming a sum of Rs.5,00,000/- under Section 163-A of Motor Vehicles Act. When claim petition is filed under Section 163-A Motor Vehicles Act, the 1st respondent need not prove the negligence. At the same time, it has to be taken into consideration, nature of policy issued by the appellant/Insurance Company and whether any extra premium was paid by the 2nd respondent to cover the personal accident claim as well as the liability of the rider of the motorcycle. In the present case, the appellant has taken a specific stand in the counter statement that the 1st respondent being rider of the motorcycle is not covered by the policy issued by the appellant. The Tribunal has not considered the specific stand taken by the appellant and has not given any finding. Further, in the claim petition filed under Section 163 A of the Motor Vehicles Act, under Second Schedule, the compensation can be awarded only as per structural formula mentioned in the Second Schedule. The Tribunal has failed to consider the same.

13.For the above reason, the award of the Tribunal dated 12.08.2015 made in M.C.O.P.No.729 of 2014 is set aside. The Civil Miscellaneous Appeal is allowed and the matter is remanded back to the Tribunal for fresh consideration. It is open to the parties to let in any further evidence, if they desire so. The M.C.O.P. is of the year 2014 and the Tribunal is directed to dispose of the same within a period of three months from the date of receipt of a copy of this judgment. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

1. The Special Subordinate Judge,
   Motor Accident Claims Tribunal
   Dharmapuri.

2. The Section Officer
   VR Section
   High Court
   Madras.

+1cc to M/s.N.Vijayaraghavan, Advocate, S.R.No.7351

C.M.A.No.2264 of 2016
and
C.M.P.No.15991 of 2016

RR(CO)
CS/26/08/2021