



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 06.10.2020

Pronounced on: 12 .10.2020

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Coram:

The Honourable Dr.Justice G.Jayachandran

C.M.A.No.2392 of 2016
& C.M.P.No.16640 of 2016

The Branch Manager,
The Oriental Insurance Company Ltd.,
No.1st Floor, Gopal Rao Library Building,
Town Hall Road, Kumbakonam - 612 001.

...Appellant/Respondent

/versus/

1. G.Santhi, aged 37 years,
W/o.Govindaraj @ Govindarajan,
2. Manikandan, aged 19 years,
S/o.Govindaraj @ Govindarajan,
3. Minor Manimegalai, aged 16,
D/o.Govindaraj @ Govindarajan,
represented by her mother Santhi as natural guardian.
4. Anjammal, aged 65,
W/o.Petchimuthu @ Masilamani,
All are residing at Anna Nagar, South Street,
Maharajapuram, Nannilam Taluk.

... Respondents/Claimant

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the decree and judgment dated 20th day of May 2016, made in M.C.O.P.No.327 of 2015, on the file of the Motor Accident Claims Tribunal, (Court of Chief Judicial Magistrate), Tiruvarur.

For Appellant : Mr.K.Vinod,

For Mrs.Elveera Ravindran

For R1 to R4 : Mr.M.Thamizhavel



J U D G M E N T

(The case has been heard through video conference)

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This Appeal is filed by the Insurance Company aggrieved by the liability fixed on them to pay the compensation to dependants of the Motor Accident victim who hit a pig and fell down while riding his two wheeler.

2. The facts of the case is that, on 27.06.2015, at about 6.00 a.m, when the deceased Govindaraj was riding his motorcycle bearing registration No.TN.50.Q.8401, TV Sport Motorcycle, near Vishnupuram Iyar Sudukadu at Poonthottam - Eravanchery main road, Thiruvarur District, a pig suddenly crossed the road. The deceased hit the pig and fell down on the road. He sustained severe head injury. He died in the hospital on the next day. He was 37 years old. At the time of accident, he was working as an agricultural Coolie. He left behind his wife, minor daughter, son and 65 years old mother. Claim petition filed under Section 163-A of Motor Vehicle Act, seeking a sum of Rs.15,00,000/- as compensation.

3. The 2nd respondent, who is the insurer of the two wheeler filed counter stating that, the rider of the two wheeler had no valid driving license. The owner of the two wheeler who allowed the deceased to ride her vehicle without diving license is responsible to compensate him. Since the claimants have not arrayed the vehicle owner, the claim petition is bad in law. The accident occurred due to the negligence of the deceased. He is the tort-feasor. He drove the vehicle under influence of alcohol in rash and negligent manner. He lost balance and fell down from the vehicle.

4. The Tribunal, on considering the evidence and relying upon the judgment of the Hon'ble Madras High Court, in Robacca Vs. Nagarjuna Finance Limited reported in 2012 (2) TN MAC 763, has held that the claimant under Section 163-A is not obliged to plead or prove negligence. If the accident occurred due to the negligence of the claimant, it is the burden on the Insurance Company to plead and prove the same. In the instant case, in the absence of necessary evidence from the insurance company regarding the negligence of the claimant, claim petition under Section 163-A of Motor Vehicle Act is maintainable. Therefore, applying the multiplier mentioned in Schedule-II of the Motor Vehicles Act, the tribunal awarded a sum of Rs.7,40,000/- as compensation.

5. In this appeal, the insurance Company contend that, the vehicle owner is the wife of the deceased. The deceased, who



is the borrower of the two wheeler, has entered into the shoes of the owner. Hence, legal representatives of the deceased cannot lay claim petition under Section 163-A of Motor Vehicle Act. The said legal preposition has been settled by the Hon'ble Supreme Court in Ningamma and another Vs. Untied India Insurance Company Limited reported in (2009) 13 SCC 710. The Tribunal failed to following the dictum of the Hon'ble Supreme Court judgment, had misapplied the structured formulate mentioned under Section 163-A of M.V.Act.

7. The Learned Counsel appearing for the appellant referring Section 163-A and Schedule-II of the Motor Vehicle Act, 1988, would submit that, when the owner of the vehicle himself has involved in the accident, Section 163-A is not applicable. The expression "any person" used in Section 163-A (2) of the Act, does not include the owner of the vehicle or the borrower of the vehicle from the owner, who enters into the shoes of the owner.

8. Per contra, the Learned Counsel appearing for the respondent/claimant would submit that, the Tribunal, after considering the facts of the case, has rightly held that claimant under Section 163-A need not prove negligence. The insurer having collected the premium for the Personal Accident of the driver, cannot deny liability.

9. The undisputed facts in this case is that the accident occurred when the rider of the two wheeler hit a pig while suddenly crossed the road. The vehicle stands in the name of the deceased wife, who is the 1st claimant. The claim petition is filed under section 163-A of Motor Vehicle Act.

Section 163-A of Motor Vehicle Act reads as below:-

163-A Special provisions as to payment of compensation on structured formula basis.-

(1) Notwithstanding anything contained in this Act or in any other law for the time being in force or instrument having the force of law, the owner of the motor vehicle or the authorised insurer shall be liable to pay in the case of death or permanent disablement due to accident arising out of the use of motor vehicle, compensation, as indicated in the Second Schedule, to the legal heirs or the victim, as the case may be.

Explanation.-For the purposes of this sub-section, "permanent disability" shall have the same meaning and extent as in the Workmen's Compensation Act, 1923 (8 of 1923).



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(2) In any claim for compensation under sub-section (1), the claimant shall not be required to plead or establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act or neglect or default of the owner of the vehicle or vehicles concerned or of any other person.

(3) The Central Government may, keeping in view the cost of living by notification in the Official Gazette, from time to time amend the Second Schedule

10. The meaning of the expression "any person" found in Section 163-A (2) of Motor Vehicles Act, came for consideration before the Hon'ble Supreme Court in New India Assurance Company Limited Vs. Asha Rani and others reported in (2003) 2 SCC 233. In the said judgment, the Hon'ble Supreme Court has held as below:-

"26...that the meaning of the words "any person" must also be attributed having regard to the context in which they have been used i.e. 'a third party'. Keeping in view the provisions of 1988 Act, we are of the opinion that as the provisions thereof do not enjoin any statutory liability on the owner of a vehicle to get his vehicle insured for any passenger travelling in a goods vehicle, the insurers would not be liable therefore."

11. Thus, the Hon'ble Supreme Court has settled the issue by saying that the expression "any person" employed in 163-A of Motor Vehicle Act, is to be understood as a third party. It does not included the owner of the vehicle.

12. In Oriental Insurance Company Limited Vs. Rajni Devi, reported in (2008) 5 SCC 736, the Hon'ble Supreme Court has held 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 liability under section 163-A of the MVA is on the owner of the vehicle. So a



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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."

13. In New India Assurance Company Limited Vs. Sadanand Mukhi reported in 2009 2 SCC 417, the accident occurred when son of the vehicle owner ride the vehicle and died in the accident. The Hon'ble Supreme Court held that, the deceased is not a third party, neither Section 163-A nor Section 166 of Motor Vehicle Act could be applicable.

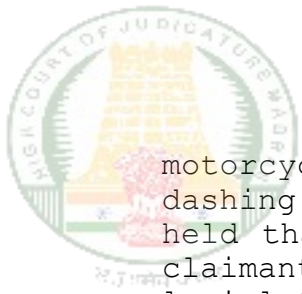
14. In Ningamma case cited supra by the Learned Counsel for the appellant, the Hon'ble Supreme Court has considered the legislative intend for introducing Section 163-A in the Motor Vehicle Act and the extend of insurer to indemnify the insured or deceased third party.

15. In Sadanand Mukhi case cited supra, the Hon'ble Supreme Court has held that, it is a burden of the insurer to establish that the borrower of the vehicle has entered into the shoes of the vehicle owner and borrower cannot be treated as third party. In the absence of such evidence, the insurance company cannot be exonerated from its liability. In this judgment, the Hon'ble Supreme Court has concluded that the relationship between the rider of the motorcycle and the owner of the motorcycle has to be established through evidence to defeat the claim of compensation. The insurer should establish the rider represented the owner and as such, not a third party.

16. In the above said case, the insurer failed to discharge the said owners and therefore, the rider was treated as a third party and liability to pay compensation was fastened on the insurer.

17. In the instant case, the deceased is the husband of the vehicle owner. In the claim petition, the owner of the vehicle is the 1st claimant and her children are 2nd and 3rd claimant, the mother of the deceased is the 4th claimant. So, there can be no doubt that the deceased, who is the borrower of the vehicle, has entered into the shoes of the vehicle owner. If the principle laid in Sadanand Mukhi case is applied, Section 163-A of the Motor Vehicles Act, 1988, which provides for special provision as to payment of compensation on structured formula basis, in respect of third parties insured or deceased is not applicable to the claimants.

18. If one read the Supreme Court judgment rendered in Ningamma and others cited supra, when a deceased rider of the



motorcycle borrowed from real owner met with the accident by dashing against a bullock cart, we find that the Apex Court has held that though the Section 163-A may not be applicable to the claimants, in tune with the spirit of the beneficial and welfare legislation. The Court is duty bound to entitled to award just compensation irrespective of the fact whether any plea in that behalf was raised by the claimants or not.

19. After observing so, in Ningamma case cited supra, at paragraph No.35, has held that,

"However, whether or not the claimants would be governed with the terms and conditions of the insurance policy and whether or not the provisions of Section 147 of the MVA would be applicable in the present case and also whether or not there was rash and negligent driving on the part of the deceased, are essentially a matter of fact which was required to be considered and answered at least by the High Court. While entertaining the appeal, no effort was made by the High Court to deal with the aforesaid issues, and therefore, we are of the considered opinion that the present case should be remanded back to the High Court to give its decision on the aforesaid issues."

20. The Apex Court remanded the matter back to High Court for dealing with the said issues and to render its decision in accordance with law.

21. Therefore, this Court holds that the Tribunal has erred in awarding compensation for the claimants under Section 163-A of Motor Vehicle Act, when the deceased who borrowed the vehicle, has entered into the shoes of the vehicle owner and no other vehicle involved in the accident.

22. However, as per the terms and conditions of the Insurance Policy the personal accident coverage which indemnifies the owner of the vehicle will cover the borrower of the vehicle who enters the shoes of the owner. Unfortunately, in this case, there is violation of policy condition namely the rider had no driving license. So, pay and recovery principle has to be applied. But, in this case, pay and recovery will be meaningless since the first claimant is the owner of the vehicle and other claimants are her children and mother-in-law. Therefore, neither under Section 163-A nor under 166 of Motor Vehicle Act, the claimants are entitled for compensation.



23. Accordingly, the Civil Miscellaneous Appeal is Allowed. The award passed by the Tribunal in M.C.O.P.No.327 of 2015 is hereby set aside. No costs. Consequently, connected Miscellaneous Petition is closed.

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Sd/-
Assistant Registrar (CS)

// True Copy//

Sub Assistant Registrar

bsm

To:

1.The Motor Accident Claims Tribunal,
(Court of Chief Judicial Magistrate),
Tiruvarur.

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

+1cc to Mr.M.Thamizhavel, Advocate, S.R.No.33674

Delivery Judgment in
C.M.A.No.2392 of 2016
& C.M.P.No.16640 of 2016

RGN (CO)
SU(11/08/2021)