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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.12.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A. No.726 of 2013

The Branch Manager,
National Insurance Co. Ltd.,
Branch 1, No.62-A, J.N. Street,
Pondicherry.

... Appellant / 2nd Respondent

Vs.

1.Vennila

2.Minor Praveen Anand
(rep. By his next friend & mother, Vennila)

3.Saroja

4.Perumal ...Respondents 1 to 4 / Petitioners

5.Velu ...5th Respondent / 1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 12.09.2012, made in M.C.O.P. No.581 of 2006, on the file of the Principal District Court, (Motor Accident Claims Tribunal), Puducherry.

For Appellant : Mr. M. Krishnamoorthy

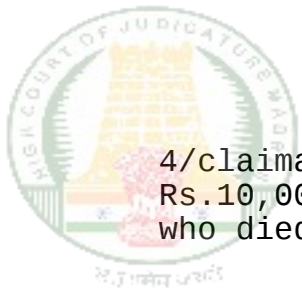
For Respondents : No appearance (For R1 to R4)

J U D G M E N T

The matter is heard through "Video Conferencing".

This Civil Miscellaneous Appeal has been filed by the appellant-Insurance Company against the judgment and decree dated 12.09.2012, made in M.C.O.P. No.581 of 2006, on the file of the Principal District Court, (Motor Accident Claims Tribunal), Puducherry.

2.The appellant is the 2nd respondent in M.C.O.P. No.581 of 2006, on the file of the Principal District Court, (Motor Accident Claims Tribunal), Puducherry. The respondents 1 to



4/claimants filed the said claim petition, claiming a sum of Rs.10,00,000/- as compensation for the death of one Vengadesan, who died in the accident that took place on 20.02.2006.

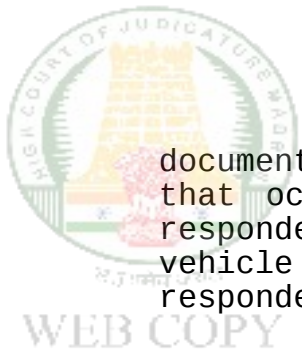
3.According to the respondents 1 to 4, on the date of accident, the deceased was working as a Maistry in brick manufacturing unit of the 5th respondent. As directed by the 5th respondent/owner, in order to collect money from the customers, the deceased drove the Motorcycle bearing Registration No.PY-01-AC-3909 belonging to the 5th respondent on Bahour road and near water tank street junction, in order to avert hitting the persons suddenly crossing the road from opposite direction, the deceased applied brake, lost control and fell on the road and sustained injuries. Inspite of treatment, he died on 27.02.2006. Hence, the respondents 1 to 4 filed the claim petition claiming compensation against the 5th respondent as owner and appellant as insurer of the said vehicle.

4.The 5th respondent remained exparte before the Tribunal.

5.The appellant-Insurance Company, filed counter statement and denied all the averments made by the respondents 1 to 4 in the claim petition. According to the appellant, the accident did not occur as alleged by the respondents 1 to 4 in the claim petition. The accident occurred on 20.02.2006, while one Amarajothi lodged complaint before the Bahour Police Station only on 21.02.2006, in which it has been stated that an unknown person came in the Motorcycle in a rash and negligent manner and dashed against one Thangarasu, resulting injuries to him. In the complaint, it has been further stated that rider of the vehicle also fell down and got injuries on his head. In the Motor Vehicle Inspector's report, at column 5, the Motor Vehicle Inspector specifically noted that at the time of accident, the vehicle was driven by one Rajaraman, son of Subramania and not by deceased Venkatesan, as alleged by the respondents 1 to 4. Admittedly, the accident occurred near a water tank, where the rider of the Motorcycle ought to have rode the vehicle slowly. For the rash and negligent riding by the rider of the Motorcycle, the appellant is not entitled to pay compensation to the respondents 1 to 4. The respondents 1 to 4 have to prove that the rider of the Motorcycle possessed valid driving license and the vehicle was insured with the appellant at the time of accident. In any event, the total compensation claimed by the respondents 1 to 4 is excessive and prayed for dismissal of the claim petition.

6.Before the Tribunal, the 1st respondent examined herself as P.W.1, examined eye witness as P.W.2 and marked 13 documents as Exs.A1 to A13. The appellant did not let in any oral and documentary evidence.

7.The Tribunal considering the pleadings, oral and



documentary evidence, held that the deceased died in the accident that occurred while using the Motorcycle belonging to the 5th respondent and directed the appellant as insurer of the said vehicle to pay a sum of Rs.6,60,000/- as compensation to the respondents 1 to 4.

8.Challenging the liability fastened on them and questioning the quantum of compensation granted by the Tribunal in the award dated 12.09.2012, made in M.C.O.P. No.581 of 2006, the appellant - Insurance Company has come out with the present appeal.

9.The learned counsel appearing for the appellant-Insurance Company contended that the claim petition filed under Section 163-A of the Motor Vehicles Act (hereinafter referred to as 'the Act') is not maintainable as the respondents 1 to 4 claimed that the deceased was earning Rs.180/- per day as Maistry in Bricks Manufacturing Unit of the owner of the Motorcycle, 5th respondent herein. The Tribunal ought to have dismissed the claim petition as the deceased was responsible for the accident and Section 163-A claim is based on fault liability. In the FIR, the deceased was shown as accused and as per Ex.P12 - charge sheet, the case has been dropped by the Police as the deceased was at fault. The rider of the Motorcycle is not required to be covered under Section 147 of the Act. The learned counsel appearing for the appellant further contended that the Tribunal erroneously awarded compensation contrary to the provisions of Section 163-A and II Schedule of the Act which provides maximum annual income of Rs.40,000/- and Rs.2,000/- for funeral expenses and Rs.2,500/- for loss of estate under conventional heads. The Tribunal erroneously fixed monthly income of the deceased excessively as Rs.4,500/-, over looking the provisions of Section 163-A of the Act. The amounts awarded by the Tribunal is contrary to the provisions of II Schedule of the Act.

10.In support of his contentions, the learned counsel appearing for the appellant relied on the following judgments:

(i) 2004 (1) TN MAC (SC) 193 [Deepal Girishbhai Soni and others v. United India Insurance Co. Ltd., Baroda]:

"41. Chapter XI was, thus, enacted for grant of immediate relief to a section of people whose annual income is not more than Rs. 40,000/- having regard to the fact that in terms of Section 163-A of the Act read with the Second Schedule appended thereto; compensation is to be paid on a structured formula not only having regard to the age of the victim and his income but also the other factors relevant therefor.....

.....

50.The scheme envisaged under Section 163-



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A, in our opinion, leaves no manner of doubt that by reason thereof the rights and obligations of the parties are to be determined finally. The amount of compensation payable under the aforementioned provisions is not to be altered or varied in any other proceedings. It does not contain any provision providing for set off against a higher compensation unlike Section 140. In terms of the said provision, a distinct and specified class of citizens, namely, persons whose income per annum is Rs. 40,000/- or less is covered thereunder whereas Sections 140 and 166 cater to all sections of society.

.....

66. We, therefore, are of the opinion that Kodala (supra) has correctly been decided. However, we do not agree with the findings in Kodala (supra) that if a person invokes provisions of Section 163-A, the annual income of Rs. 40,000/- per annum shall be treated as a cap. In our opinion, the proceeding under Section 163-A being a social security provision, providing for a distinct scheme, only those whose annual income is upto Rs. 40,000/- can take the benefit thereof. All other claims are required to be determined in terms of Chapter XII of the Act."

(ii) 2020 (1) TN MAC 1 (SC) [Ramkhiladi and another Vs. United India Insurance Co. Ltd., and another]:

"5. Heard learned counsel appearing on behalf of the respective parties at length. We have also perused and considered the Judgment and Award passed by the learned Tribunal as well as the impugned Judgment and Order passed by the High Court and the evidence on record. The short question which is posed for consideration of this Court is whether, in the facts and circumstances of the case and in a case where the driver, owner and the insurance company of another vehicle involved in an accident and whose driver was negligent are not joined as parties to the claim petition, meaning thereby that no claim petition is filed against them and the claim petition is filed only against the owner and the insurance company of another vehicle which was driven by the deceased himself and the deceased being in the shoes of the owner of the vehicle driven by himself, whether the insurance company of the vehicle driven by the deceased himself would be liable to pay the compensation under Section 163A of the Act?;



Whether the deceased not being a third party to the vehicle No. RJ 02 SA 7811 being in the shoes of the owner can maintain the claim under Section 163A of the Act from the owner of the said vehicle?

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5.1 The learned Tribunal held that even in absence of the driver, owner and the insurance company of another vehicle involved in an accident and whose driver was solely negligent, the application under Section 163A of the Act would be maintainable against the owner and the insurance company of the vehicle which was driven by the deceased himself, firstly on the ground that the deceased was in employment of the owner of the vehicle which was driven by him and secondly, in an application under Section 163A of the Act, the negligence is not required to be established and proved and it is enough to establish and prove that the deceased has died in a vehicular accident and while driving a vehicle. The High Court has not agreed with the same and by the impugned Judgment and Order has held that as the claimants have not filed the claim petition against the owner of another vehicle whose driver was in fact negligent, even as per the claimants and the claim petition should have been filed by the claimants against the owner of another vehicle to seek the compensation, the application under Section 163A of the Act against the insurance company of the vehicle driven by the deceased himself is liable to be dismissed.

5.2 While answering the aforesaid question involved in the present case, first of all, the findings recorded by the learned Tribunal on Issue No. 2 is required to be dealt with and considered. The learned Tribunal framed Issue No. 2 to the effect whether the deceased driver was driving the vehicle motor cycle bearing registration No. RJ 02 SA 7811 being in employment of the vehicle owner opposite party Bhagwan Sahay in his interest or with his permission/knowledge

5.3 While answering the finding recorded by the learned Tribunal on Issue No. 2, it appears that, as such, the learned Tribunal has not at all answered the aforesaid issue. While answering Issue No. 2, there is no specific finding whether the deceased driver was in employment of the opponent owner Bhagwan Sahay or not. Even otherwise, no evidence is led by the claimants to prove that the



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deceased driver was in employment of the opponent owner Bhagwan Sahay. Despite the above, while answering Issue No. 4 there is some observation made by the learned Tribunal that the deceased driver was in employment of the opponent owner Bhagwan Sahay, which is not supported by any evidence on record. Under the circumstances, the deceased driver cannot be said to be in employment of the opponent owner Bhagwan Sahay and, therefore, he can be said to be permissible user and/or borrower of motor vehicle owned by the opponent owner Bhagwan Sahay. With these findings, the main question posed for consideration of this Court referred to hereinabove is required to be considered.

5.4 An identical question came to be considered by this Court 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 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.

5.5 It is true that, in a claim under Section 163A 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 163A 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 163A 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 163A of the Act against the owner and insurer of the vehicle bearing registration No. RJ 02 SA 7811. In the present case, 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. In the present case, as observed hereinabove, the deceased cannot be said to be a third party with respect to the insured vehicle bearing registration No. RJ 02 SA 7811. 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. As held by this Court in the case of Dhanraj (supra), 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. In the said decision, it is further held by this Court that Section 147 does not require an insurance company to assume risk for death or bodily injury to the owner of the vehicle.

5.6 In view of the above and for the reasons stated above, in the present case, as the claim under Section 163A of the Act was made only against the owner and insurance company of the



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vehicle which was being driven by the deceased himself as borrower of the vehicle from the owner of the vehicle and he would be in the shoes of the owner, the High Court has rightly observed and held that such a claim was not maintainable and the claimants ought to have joined and/or ought to have made the claim under Section 163A of the Act against the driver, owner and/or the insurance company of the offending vehicle i.e. RJ 29 2M 9223 being a third party to the said vehicle.

5.7 Now, so far as the reliance placed upon by the learned Advocate for the claimants on the decision of this Court in the case of Naveen Kumar (supra), on considering the issue involved in that decision, we are of the opinion that the said decision shall not be applicable to the facts of the case on hand and/or the same shall not be of any assistance to the claimants. In that case, the issue was as to who could be said to be the registered owner of the vehicle and the liability of the owner who sold the vehicle, but his name continued to be as the owner with the registering authority. To that, it was held that the person in whose name the motor vehicle stands registered is the owner of the vehicle for the purpose of the Act.

5.8 However, at the same time, even as per the contract of insurance, in case of personal accident the owner driver is entitled to a sum of Rs.1 lakh. Therefore, the deceased, as observed hereinabove, who would be in the shoes of the owner shall be entitled to a sum of Rs.1 lakh, even as per the contract of insurance. However, it is the case on behalf of the original claimants that there is an amendment to the 2 nd Schedule and a fixed amount of Rs.5 lakh has been specified in case of death and therefore the claimants shall be entitled to Rs.5 lakh. The same cannot be accepted. In the present case, the accident took place in the year 2006 and even the Judgment and Award was passed by the learned Tribunal in the year 2009, and the impugned Judgment and Order has been passed by the High Court in 10.05.2018, i.e. much prior to the amendment in the 2nd Schedule. In the facts and circumstance of the present case, the claimants shall not be entitled to the benefit of the amendment to the 2 nd Schedule. At the same time, as observed hereinabove, the claimants shall be entitled to Rs.1 lakh as per the terms of the contract of insurance, the driver being in the



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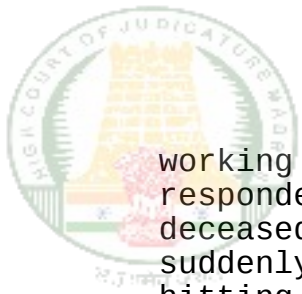
shoes of the owner of the vehicle.

5.9 Now, so far as the submission made on behalf of the claimants that in a claim under Section 163A of the Act mere use of the vehicle is enough and despite the compensation claimed by the heirs of the owner of the motorcycle which was involved in the accident resulting in his death, the claim under Section 163A of the Act would be maintainable is concerned, in view of the decision of this Court in *Rajni Devi (supra)*, the aforesaid cannot be accepted. In *Rajni Devi (supra)*, it has been specifically observed and held that the provisions of Section 163A of the Act cannot be said to have any application with regard to an accident wherein the owner of the motor vehicle himself is involved. After considering the decisions of this Court in the cases of *Oriental Insurance Co. Ltd. V. Jhuma Saha (2007) 9 SCC 263*; *Dhanraj (supra)*; *National Insurance Co. Ltd. V. Laxmi Narain Dhut (2007) 3 SCC 700* and *Premkumari v. Prahlad Dev (2008) 3 SCC 193*, it is ultimately concluded by this Court that the liability under Section 163A of the Act is on the owner of the vehicle as a person cannot be both, a claimant as also a recipient and, therefore, the heirs of the owner could not have maintained the claim in terms of Section 163A of the Act. It is further observed that, for the said purpose, only the terms of the contract of insurance could be taken recourse to. In the recent decision of this Court in the case of *Ashalata Bhowmik (supra)*, it is specifically held by this Court that the parties shall be governed by the terms and conditions of the contract of insurance. Therefore, as per the contract of insurance, the insurance company shall be liable to pay the compensation to a third party and not to the owner, except to the extent of Rs.1 lakh as observed hereinabove."

11. Though the respondents 1 to 4 entered appearance through counsel, there is no representation on behalf of them on 09.12.2020. To give them one more opportunity, the matter was adjourned today. Today also, there is no representation for them.

12. Heard the learned counsel appearing for the appellant-Insurance Company and perused the materials available on record.

13. From the materials available on record, it is seen that the respondents 1 to 4 filed claim petition under Section 163-A of the Act, claiming compensation for the death of one Vengadesan. According to the respondents 1 to 4, the deceased was



working as Maistry in Brick Manufacturing Unit under 5th respondent and was earning a sum of Rs.180/- per day. While the deceased Vengadesan was riding Motorcycle, some group of persons suddenly crossed the road from opposite direction. To avoid hitting against them, the said Vengadesan applied sudden brake, lost control and dashed against the persons coming from the opposite direction. Due to the said impact, the Vengadesan fell down from his vehicle and sustained head injury and died on 27.02.2006, inspite of treatment given. The respondents 1 to 4 filed claim petition against the 5th respondent and appellant, as owner and insurer of the Motorcycle, claiming a sum of Rs.10,00,000/- as compensation for the death of said Vengadesan.

14.The issue to be decided in the present appeal is whether the claim petition filed by the respondents 1 to 4 under Section 163-A of the Act is maintainable against the Insurance Company of the Motorcycle when the deceased who borrowed the vehicle was responsible for the accident and when he was the tort-feasor and when respondents 1 to 4 claim that the deceased was earning more than Rs.40,000/- per annum.

15.When the claim petition is filed under Section 166 of the Motor Vehicles Act, the claimant has to prove the negligence on the part of the driver and owner of the offending vehicle. Due to the same, the claim petitions were disposed after lapse of considerable time. Mean while, the injured claimant or legal representatives of deceased are put to irreparable hardship due to the said delay. When the deceased was sole bread winner, the hardship caused to the legal heirs is very severe. For speedy disposal of claim petitions filed by the claimants, Section 163-A of the Act was inserted by Act 54 of 1994 with effect from 14.11.1994. The said section reads as follows:

"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.

(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



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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."

16. As per this Section, the owner and insurer are liable to pay compensation as per II Schedule of the Act. As per Section 163-A (2) of the Act, the claimant is not required to plead and establish any wrongful act or negligence or default of the owner of the vehicle or vehicle concerned or any other person. The issue whether the owner and driver of the vehicle who is the tort-feasor can claim compensation from the owner and insurer was considered by the Hon'ble Apex Court in number of cases, wherein the Hon'ble Apex Court held that owner and driver of the vehicle who was a tort-feasor can not claim compensation from the Insurance Company.

17. In the judgment reported in 2009 (2) TNMAC 169 (SC) [Ningamma & another v. United India Insurance Co. Ltd.], the Hon'ble Apex Court considering the earlier judgment reported in (2008) 2 TNMAC 336 SC [Oriental Insurance Company vs. Rajni Devi and others], held that liability of the insurer is to indemnify the owner/insured against the claim of the third parties only. The owner is not a third party. The owner cannot be both claimant as well as recipient. The Hon'ble Apex Court further held that a person who borrows the two wheeler steps into the shoes of the owner and he is not entitled to claim compensation from the owner and insurer. The Hon'ble Apex Court in para nos. 18 and 19 of the judgment reported in 2009 (2) TNMAC 169 (SC) cited supra, has held as follows:

"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



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the above judgment, it has been held as follows:

"7. We have carefully considered the submissions of the learned counsel made at the Bar and perused the materials placed on record. It is an admitted position that the deceased was the owner-cum-driver of the vehicle in question. The accident had occurred due to the rash and negligent driving of the vehicle by the deceased. No other vehicle was involved in the accident. The deceased himself was responsible for the accident. The deceased being the owner of the offending vehicle was not a third party within the meaning of the Act. The deceased was the victim of his own action of rash and negligent driving. A Claimant, in our view, cannot maintain a claim on the basis of his own fault or negligence and argue that even when he himself may have caused the accident on account of his own rash and negligent driving, he can nevertheless make the insurance company to pay for the same. Therefore, the respondents being the LRs of the deceased could not have maintained the claim petition filed under Section 166 of the Motor Vehicles Act."

19. In the judgment reported in 2017 (2) TNMAC 753 (SC) [United India Insurance Co. Ltd., Vs. Sunil Kumar and another], the three judges bench of the Hon'ble Apex Court held that the claimants are not required to prove the negligence on the part of the owner or driver of the vehicle and Insurance Company is not entitled to raise the plea of negligence. In para 8 of the above judgment, it has been held as follows:

"8. From the above discussion, it is clear that grant of compensation under Section 163-A of the Act on the basis of the Structured Formula is in the nature of a Final Award and the adjudication thereunder is required to be made without any requirement of any proof of negligence of the Driver/Owner of the vehicle(s) involved in the accident. This is made explicit by Section 163-A(2). Though the aforesaid section of the Act does not specifically exclude a possible defence of the Insurer based on the negligence of the Claimant as contemplated by Section 140(4), to permit such defence to be introduced by the Insurer and/or to understand the provisions of Section 163-A of the Act to be contemplating any such situation would go contrary to the very legislative object behind introduction of Section 163-A of the Act, namely, final compensation within a limited time frame on the basis of the Structured Formula to overcome



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situations where the claims of compensation on the basis of fault liability was taking an unduly long time. In fact, to understand Section 163-A of the Act to permit the Insurer to raise the defence of negligence would be to bring a proceeding under Section 163-A of the Act at par with the proceeding under Section 166 of the Act, which would not only be self-contradictory but also defeat the very legislative intention."

20. The above said ratio was reiterated by the another three judges bench in the judgment reported in 2018 (2) TNMAC 149 (SC) [Shivaji and another Vs. United India Insurance Co. Ltd.], wherein it has been held as follows:

"5. The issue which arises before us is no longer res integra and is covered by a recent judgment of Three-Judges of this Court in United India Insurance Co. Ltd., Vs. Sunil Kumar and another, 2017 (2) TN MAC 753 (SC): AIR 2017 SC 5710, wherein it was held that to permit a defence of negligence of the claimant by the insurer and/or to understand Section 163-A of the Act as contemplating such a situation, would be inconsistent with the legislative object behind introduction of this provision, which is "final compensation within a limited time frame on the basis of the Structured Formula to overcome situations where the claims of Compensation on the basis of fault liability was taking an unduly long time". The Court observed that if an Insurer was permitted to raise a defence of negligence under Section 163-A of the Act, it would "bring a proceeding under Section 163-A of the Act at par with the proceeding under Section 166 of the Act which would not only be self-contradictory but also defeat the very legislative intention". Consequently, it was held that in a proceeding under Section 163-A of the Act, the Insurer cannot raise any defence of negligence on the part of the victim to counter a claim for Compensation."

21. The issue of maintainability of the claim petition by owner or rider under Section 163-A of the Act is again considered by the Hon'ble Apex Court in the judgment reported in 2020 (1) TN MAC 1 (SC) cited supra, wherein it has been held that claim petition filed under Section 163-A of the Act by owner or borrower of vehicle is not maintainable as borrower steps into the shoes of the owner.

22. I had an occasion to consider this issue in C.M.A.No.3414 of 2019. Considering the judgment of the Honb'le



Apex Court, by the judgment dated 28.05.2020, in C.M.A.No.3414 of 2019, I held that the claimant is not entitled to claim compensation from the insurer of the vehicle in which he was riding, when another vehicle viz., Mahendra Maximo Van driven in a rash and negligent manner dashed against the Motorcycle driven by him. The relevant paragraphs are as follows:

"19.The judgment reported in 2020 (1) TN MAC 1 (SC) [Ramkhiladi and another Vs. United India Insurance Co. Ltd., and another], relied on by the learned counsel appearing for the appellant is squarely applicable to the facts of the present case. The Hon'ble Apex Court referring to earlier judgment, especially 2009 (2) TNMAC 169 (SC) [Ningamma & another v. United India Insurance Co. Ltd.], categorically held that owner of the vehicle cannot maintain a claim petition against the insurer when the accident has occurred only due to negligence on the part of the other vehicle.

20.In view of the above finding, the reliance placed by the learned counsel appearing for the respondent on the judgments of the Hon'ble Apex Court in 2018 (2) TNMAC 149 (SC) [Shivaji and another Vs. United India Insurance Co. Ltd.] and 2017 (2) TNMAC 753 (SC) [United India Insurance Co. Ltd., Vs. Sunil Kumar and another] do not advance the case of the respondent. Further, the respondent has stated that accident has occurred only due to rash and negligent driving by Mahendra Maximo Van and the respondent is making a claim against the appellant who is the insurer of Motorcycle driven by the respondent, since the Mahendra Maximo Van is not insured and he cannot claim compensation from the owner of the said vehicle. The reason given for filing claim petition against the appellant is not valid and claim petition is not maintainable under Section 163-A of the Motor Vehicles Act."

23.In the present case, from the materials available on record, it is seen that the deceased who was riding Motorcycle borrowed from his employer, the 5th respondent herein, caused accident by hitting the persons who crossed the road, fell down, sustained injuries and died. The FIR was registered against the deceased/rider of the Motorcycle. From the above materials, it is clear that the deceased was riding the Motorcycle borrowed from the owner and had stepped into the shoes of the owner. In view of the judgments referred to above, the legal heirs of the deceased who was the tort-feasor are not entitled to maintain the claim petition under Section 163-A of the Act, as the deceased himself was the tort-feasor.



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24.The learned counsel appearing for the appellant further contended that the deceased was working as Maistry in Brick Manufacturing Unit under 5th respondent and was earning a sum of Rs.180/- per day, which exceeds the maximum income as mentioned in the II Schedule of the Act. A claimant or legal representatives of the deceased can maintain the claim petition under Section 163-A of the Act if the annual income does not exceed Rs.40,000/- and Courts can grant compensation as per this structural formula in the II Schedule. The Honb'le Apex Court in the judgment reported in 2004 (1) TN MAC (SC) 193 [Deepal Girishbhai Soni and others Vs. United India Insurance Co. Ltd., Baroda], held that the proceedings under Section 163-A of the Act being a social security provision, providing for a distinct scheme, only those persons whose annual income is up to Rs.40,000/- can take the benefit, invoking the provisions of Section 163-A of the Act. When the annual income exceeds Rs.40,000/-, the claim petition under Section 163-A of the Act is not maintainable. The Tribunal fixed the monthly income of the deceased at Rs.4,500/- and taking age of the deceased, granted compensation. The income fixed by the Tribunal exceeds annual income of Rs.40,000/- as mentioned in II Schedule of the Act. Further, the Tribunal without following the structural formula in II Schedule of the Act, awarded compensation under various heads, contrary to the judgments of the Honb'le Apex Court reported in 2004 (1) TN MAC (SC) 193, referred to above. For the above reason, the award of the Tribunal is liable to be set aside and is hereby set aside.

25.In the result, this Civil Miscellaneous Appeal is allowed and the award of the Tribunal is set aside. It is represented by the learned counsel appearing for the appellant that as per the order of this Court dated 14.06.2013, they have already deposited 50% of the award amount to the credit of M.C.O.P.No.581 of 2006. In view of allowing the appeal, the appellant-Insurance Company is permitted to withdraw the amount, lying in the credit of M.C.O.P. No.581 of 2006, if the award amount has already been deposited by them. It is made clear that if the respondents 1 to 4 have already withdrawn the award amount, the appellant-Insurance Company is not entitled to recover the same from the respondents 1 to 4 and they are entitled to recover the amounts only from the 5th respondent, owner of the vehicle. No costs.

Sd/-
Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar



To

- NMI(CO)
SB(01/09/2021)