



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 09.10.2020

Pronounced on: 13.10.2020

WEB COPY

Coram:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

C.M.A.No.2773 of 2016

1. K.Indumathi,
W/o.Late V.Vasudevan.
2. Minor I.V.Bavanya, aged about 4 years,
D/o.Late N.Vasudevan rep. by her,
Next friend Mother K.Indumathi.
3. Pavayammal,
W/o.Nallasamy Gounder.

All are residing at:
Veppampalayam, Perundurai Taluk,
Erode District.

... Appellants

/versus/

1. M.Periyasamy,
S/o.Marappan,
No.9/83, Athikadu,
Vellankoil Post,
Gobichettipalayam Taluk,
Erode District.
2. The Branch Manager,
The New India Assurance Co., Ltd.,
Micro Branch Office,
Pollachi Road, Palladam,
Coimbatore District.

... Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the decree and judgment dated 07.10.2015 made in M.C.O.P.No.57 of 2014 on the file of the Learned Motor Accidents Claims Tribunal Subordinate Judge, Perundurai.

For Appellant : Mr.Harish Chandrasekan
for Mr.N.Manokaran



For R2 : Mr.G.Anandan

For R1 : ex parte

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JUDGMENT

(The case has been heard through video conference)

The unsuccessful claimants before the Motor Accident Claims Tribunal/Subordinate Judge, Perundurai are before this Court in the appeal filed under Section 173 of Motor Vehicles Act, 1988.

2. The short facts of the case is that, on 26.11.2013, at about 11.15 p.m, the deceased Vasudevan, who had a valid Driving License to ride motorcycle with gear, had taken the motorcycle bearing registration No.TN-33-AA-8051 owned by Thiru.Periyasamy, without his permission. He fell from the vehicle and sustained head injury and died on the spot due to shock and haemorrhage. The post-mortem report indicates the head injury has caused loss of his brain substance.

3. The Claim Petition filed under section 163-A of the Motor Vehicle Act, by his widow, minor daughter and mother was dismissed by the Tribunal as not maintainable. Stating that, the deceased is the borrower of the vehicle from its owner and as per the dictum of the Hon'ble Supreme Court laid in Ningamma vs. United India Insurance Company Limited reported in (2009 ACJ 2020 (SC), the deceased is neither a third party nor employee under the owner. As a borrower of the vehicle, he had entered into the shoes of the owner. So, the insured/owner is not vicariously liable to pay the borrower of his vehicle. The insurer is also not responsible to indemnify the owner, since there is no insurance coverage to the tort-feasor/borrower of the vehicle.

4. It is an admitted fact that the deceased fell down from the vehicle on his own while riding and died. No other motor vehicle was involved in the accident. Hence, petition is filed under Section 163-A of the Motor Vehicles Act, without attributing negligence. For the present, the law settled by the Hon'ble Supreme Court in Ningamma case cited supra is that, in case of borrower of the vehicle, he enters into the shoes of the owner and he is not a third party.

5. However, in Ram Khiladi & another vs. The United



India Insurance Company & Another reported in 2020 (1) CTC 443, the Hon'ble Supreme Court while considering the dictum laid in Ningamma case in respect of claim petitions filed under 163-A of the Act, held that the liability of the insurer to pay the rider, who is the borrower of the vehicle depends upon the terms of policy and policy coverage. The Hon'ble Supreme Court noticing that insurer has collected premium for PA cover for owner/driver, held that, the premium collected from the owner/insurer under personal accident coverage will extend to the borrower of the vehicle who enters the shoes of the owner/insured.

6. For better understandings, the relevant passage of the Supreme Court Judgment in Ram Khiladi case is extracted below :-

"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



claimants shall not be entitled to the benefit of the amendment to the 2nd 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 shoes of the owner of the vehicle.

7. In the instant case, the insurance policy is marked as Ex.R-1. It is a Two Wheeler Package Policy with period of coverage from 15/06/2013, [05:45:02 PM] to 14/06/2013, [11:59:59 PM.]. A sum of Rs.672/- for own damage and a sum of Rs 472/- towards basic Third Party cover and compulsory PA cover for owner Driver has been collected.

8. The terms of policy condition annexed to the policy certificate Ex.R.1. The portion of the policy conditions, which are relevant to decide this Appeal is extracted below:-

Section III - Personal Accident cover for
owner - Driver:

"The Company undertakes to pay compensation as per the following scale for bodily injury/ death sustained by the owner - driver of the vehicle in direct connection with the vehicle insured whilst mounting/dismounting from or travelling in the insured vehicle as a co-driver, caused by violent accidental external and visible means which independent of any other cause shall within six calendar months of such injury result in:-

Nature of Injury: Death

Scale of compensation: 100%

In respect of owner - driver arising out of any one occurrence and the total liability of the insurer shall not in aggregate exceed the sum of Rs 1 lakh during any one period of insurance."

9. Thus, as per the terms of the policy contract, the insurer has to compensate the owner-cum-driver under PA cover within 6 months, from the date of accident. The insurer cannot deny liability unless, they prove that the driver had no valid driving license or it was self inflicted injury or attempted suicide or physical defect or infirmity or the accident happened whilst such person was under the influence of intoxicating liquor or drugs.



10. The insurer, in this case has not pleaded or proved that they are not liable to pay the rider for any one of the reasons stated above. However, the Tribunal dismissed the claim on the ground that the rider was not a third party therefore, insurer is not liable to pay compensation.

11. In view of this Court, the Tribunal has erred in accepting the submission of the Insurance Company. The Tribunal has failed to properly appreciate the policy note. It has failed to consider the fact that the insurer in this case has received premium for own damage, third party claim and for personal accident claim with limited liability. It is a Two Wheeler Package policy. The Tribunal has rightly held that the deceased rider has entered into the shoes of the owner, but failed to consider that the rider by entering into the shoes of the owner, by deeming fiction, he becomes the owner of the vehicle and the PA cover provided to the owner by the insurer, covers the borrower also who has entered into the shoes of the owner.

12. Therefore, as per the terms of the Insurance Policy contract the insurer ought to have paid Rs.1,00,000/- to the claimants within six calendar month from the death of insured, without forcing the claimants to file petition under Section 163-A of the Act or it should have conceded before the Tribunal their limited liability to pay Rs1,00,000/-. Instead, they have contested the claim and had delayed the payment of compensation by nearly 6 years. Hence, this Court following the dictum laid in Ram Khiladi case cited supra, set aside the Tribunal order and allowed the Appeal filed by claimants.

13. In the result, the 2nd respondent herein is directed to pay Rs.1,00,000/-to the claimants. Since, the insurer has unreasonable failed to pay compensation within 6 calendar month as per the terms of contract, they are liable to pay interest at the rate of 12% from 25.05.2014 (end of six calendar month from the date of compensation payable as per the terms of policy condition) till the date of deposit.

14. The compensation shall be apportioned by the claimants as below:-

1st claimant (wife of the deceased): Rs 60,000/- with proportionate interest.

2nd claimant (minor daughter) : Rs 30,000/- with proportionate interest.

3rd claimant (mother of the deceased) : Rs 10,000/- with proportionate interest.



15. The 2nd respondent is directed to deposit the award amount with 12% interest within a period of 12 weeks from the date of receipt of the order copy. On such deposit, The 1st and 3rd claimants are permitted to withdraw their share of compensation. The Tribunal is directed to invest the share of the minor/2nd claimant in any of the Nationalised Bank, till she attains the age of majority. The 1st claimant, who is mother and natural guardian permitted to draw the interest accrued once in a year and spend for the maintenance of the minor.

16. Accordingly, the Civil Miscellaneous Petition is Allowed. With costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

bsm

To,

1. The Motor Accidents Claims Tribunal Subordinate Judge,
Perundurai.
2. The Section Officer,
V.R.Section,
High Court, Madras.

+1cc to Mr.G.Anandan, Advocate, S.R.No.34043

+1cc to Mr.N.Manokaran, Advocate, S.R.No.34078

C.M.A.No.2773 of 2016

RGN (CO)
SU (25/11/2021)