IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.12.2020

CORAM

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

C.M.A.No.1701 of 2020
and
CMP.No.12524 of 2020

The United India Insurance
Co. Ltd.,
64, Armenien Street,
Chennai-600 001. ... Appellant /2nd Respondent

Vs.

1. S.Lalli,
W/o. K.Selvam

2. Minor S.Sathishkumar
S/o. K.Selvam,

3. Minor Hemanthkumar
S/o. K.Selvam

4. K.Kanthammal,
W/o. Kistappan

5. V.Kistappan
2 and 3 are minors rep. By their
mother, next friend S.Lalli,
All are residing at No.21/6,
Kalaimagal Street,
Gandhi Nagar, Kodungaiyur,
Chennai-600 118.

6. G. Thilakar,
S/o. Govindasamy,
At No.143, Thiruvalluvar Street,
Madhavaram,
Chennai-600 060. .. Respondents

PRAYER:- Civil Miscellaneous Appeal preferred under Section 173 of Motor Vehicles Act against the Order and decree dated 17.07.2019 made in MCOP No.1562 of 2009 on the file of the Motor Accidents Claims Tribunal, Chief Court of Small Causes, Chennai.

For Appellant : Mr. S.Arunkumar

For Respondents 1 to 5 : Mr.K.Varadha Kamaraj

J U D G M E N T

Feeling aggrieved with the quantum of compensation awarded by the Tribunal, the insurance company is before this Court by filing this Civil Miscellaneous Appeal.

2. The case of claimants before the tribunal in brief as follows :- It is a case of fatal accident claim. The deceased in this case by name Selvam, was 40 years old at the time of accident. According to the claimants, on 11.09.2018 at about 07.00 p.m. while he was riding a motorcycle bearing Regn. No.TN-20 AZ-5167, owned by the 1st respondent, which was insured with the 2nd respondent proceeding towards Ernavoor Bridge from West to East direction, at that time, a lorry was also came in the same direction, and while overtaking the lorry, the deceased applied brake suddenly, and lost his control, dashed against the lorry, and sustained fatal injuries and died on the spot. Hence, the claimants, who are wife, minor children and parents of deceased, claiming the compensation of Rs.10 lakhs, filed the claim petition before the Tribunal under Section 163-A of Motor Vehicles Act.

3. The 1st respondent has filed a counter affidavit stating that he has purchased a motorcycle on hire purchase basis from a finance company and due to non-remittance of instalment dues, the finance company took over back the motorcycle. It is also stated that thereafter, the said motorcycle was sold out to another person viz., Ajmal, and he was not the owner of the two wheeler, to prove the same, he has filed payment slip of finance company and a delivery note. Hence, he has stated that he is not liable to pay the compensation.

4. The 2nd respondent insurance company has also filed a counter affidavit contesting the claim petition on the ground that the deceased while riding a two wheeler, died on his own negligence and hence, he cannot make a claim against his own insurance company. As the deceased himself was the tort feasor, the claimants cannot make a claim against the insurance company. The 2nd respondent had also disputed the monthly income of deceased.

5. Before the Tribunal, the claimants have examined two witnesses and marked as may as 8 documents as Ex.P1 to Ex.P8. On the side of respondents, two witnesses were examined and marked

as many as 4 documents as Ex.R1 to R4.

6. The Tribunal, after considering the materials available on record, has come to a conclusion that the deceased was not the owner of a two wheeler, and the claimant cannot maintain a claim petition against the insurance company under Sec.163-A of Motor Vehicles Act. It has further held that the accident was taken place due to the negligence of the driver of a lorry and the insurance company is liable to pay the compensation. In respect of quantum of compensation, the Tribunal had fixed the monthly income of deceased as Rs.5000/-, after deducting 1/3rd towards his personal expenses, and applied the multiplier of 15, arrived a sum of Rs.3,00,000/- towards loss of dependency. In respect of other heads, the Tribunal has awarded a sum of Rs.10,000/- towards funeral expenses, a sum of Rs.50,000/- towards loss of love and affection, and a sum of Rs.20,000/- towards loss of consortium. Thus, totally, the Tribunal has awarded a sum of Rs.3,80,000/- as compensation. Aggrieved over the same, the insurance company is before this Court by way of filing this appeal.

7. Mr.S.Arunkumar, learned counsel appearing for appellant insurance company would submit that the claim petition itself is not maintainable, seeking the compensation against own insurer. Even though the deceased, was not owner of vehicle, he was the borrower of the vehicle and the accident has taken place on his own negligence. He is being a tort feasor, there is no insurance coverage for the rider and the claimant cannot maintain a claim petition under Sec.163-A of Motor Vehicles Act. In support of his contentions, the learned counsel has relied upon the judgment of Hon'ble Supreme Court in the case of Ram Khiladi and another vs. United India Insurance Company and another reported in 2020 (1) TNMAC 1 (SC).

8. Per contra, Mr.K.Varadha Kamaraj, learned counsel appearing for respondents would contend that the deceased was not the owner of the vehicle, and he is only a third party, and he cannot maintain a claim petition under Sec.163-A of Motor Vehicles Act, the Tribunal, considering all those aspects, has awarded just and fair compensation. Hence, there is no reason to interfere with the same.

9. I have considered the rival submissions made by the learned counsel appearing for appellant as well as respondents 1 to 4 and perused the records.

10. This is a case, where the claim was made against own insurance company. In the case of National Insurance Company Ltd. vs. Ashalata Bhowmik and others reported in 2018 (9) SCC 801, the Hon'ble Supreme Court of India has held that, when

the deceased being the owner of offending vehicle and he is victim of his own action, the legal representatives cannot maintain a claim petition making insurance company to pay compensation under Sec.166 of Motor Vehicles Act. The relevant portion of judgment reads 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 legal representatives of the deceased could not have maintained the claim petition filed under Section 166 of the Motor Vehicles Act."

11. Recently, Hon'ble Supreme Court in the case of Ram Khiladi and another vs. United India Insurance Company and another reported in 2020 (1) TNMAC 1 (SC), has held that even a person, who has borrowed the vehicle from the owner of vehicle met with an accident, cannot claim compensation against the insurer as he steps into the shoes of the insured. The claimant cannot maintain a claim petition under Sec.163-A of the Motor Vehicles Act on the principles of no fault liability. The relevant portion of the judgment is reproduced hereunder :-

> "5.5. It is true that, in a claim under Section 163-A 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 163-A 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 163-A 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

163-A of the Act against the owner and insurer of the vehicle bearing Regn. 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 Regn. 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 authorised 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 163-A of the Act was made only against the owner and insurance company of the 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 163-A of the Act against the driver, owner and/or the insurance company of the offending vehicle i.e. RJ-29-2-2M-9223 being a third party to the said vehicle."

13. In the instant case, the claim petition has been filed against the insurer of the two wheeler, in which the deceased was travelling. Even though, he is not the owner of vehicle, he is a borrower of the vehicle and the accident has been taken place on his own negligence, The claimants have filed the claim petition against the owner and his insurer. The Tribunal has held that the deceased was not the owner of the vehicle, he cannot maintain claim petition under Sec.163-A of Motor Vehicles Act. The factual position of this case is squarely covered by Hon'ble Supreme Court in the case of Ram Khiladi and another vs. United India Insurance Company and another reported in 2020 (1) TNMAC 1 (SC), wherein, it has held that the claim was made against the owner and his insurer of the

vehicle, which was driven by the deceased on a borrowal of the vehicle and the legal representatives cannot maintain a claim petition either under Sec.166 or 163-A of Motor Vehicles Act. However, the Tribunal, without considering the same, had fixed the liability on the appellant insurance company.

14. Mr.S.Arukumar, learned counsel appearing for appellant would fairly submitted that, as per the personal accident coverage, which is available in the policy for a sum of Rs.1 lakh and further submit that, the personal accident coverage only available for the owner of the vehicle and not to the borrower of vehicle. However, on considering the peculiar circumstances of the case that the claimants are young widow, and two minor children and parents of the deceased, who have lost their sole bread-winner, this Court is inclined to award a sum of Rs.1 lakh as compensation to the claimants instead of Rs.3,80,000/- awarded by the Tribunal.

14. In the result, the Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.3,80,000/- is hereby reduced to Rs.1,00,000/- together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit. The appellant / insurance company is directed to deposit the award amount now determined by this Court along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P.No.1701 of 2020, on the file of the Motor Accident Claims Tribunal, Chief Court of Small Causes, Chennai. On such deposit, the respondents 1 and 5 / claimants are permitted to withdraw the award amount now determined by this Court, along with interest and costs, less the amount, if any, already withdrawn by making necessary applications before the Tribunal. The respondents 1 to 5/ claimants are entitled to refund of Court fee, if any, on the reduced amount of compensation now determined by this Court. As far as the share of minor respondents viz., respondents 2 and 3 are concerned, the same shall be deposited in any nationalised bank in any interest bearing fixed deposit scheme until the minors attain majority and the interest thereon shall be withdrawn by minor respondents' mother, once in three months. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-IX)

//True Copy//

Sub Assistant Registrar

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To

The Motor Accidents Claims Tribunal,
Chief Court of Small Causes, Chennai.

+1cc to Mr.S.Arukumar, Advocate, S.R.No.43104
+1cc to Mr.K.Varadha Kamaraj, Advocate, S.R.No.42558

C.M.A.No.1701 of 2020
and
C.M.P. No.12524 of 2020

CP(CO)
GN(30/09/2021)