

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 24.02.2020	Delivered on: 28.05.2020
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CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A. No. 3414 of 2019
and C.M.P. No. 20029 of 2019

The Manager,
M/s. IFFCO-TOKIO General Insurance Co. Ltd.,
at No.25-B, First Floor,
Raja Street, Pudupalayam,
Gobichettipalayam. Appellant

Vs.

Nataraj Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award dated 12.02.2019, made in M.C.O.P. No. 14 of 2016, on the file of the IV Additional District Court, (Motor Accident Claims Tribunal), Bhavani.

For Appellant : Mr. S. Arunkumar

For Respondent : Mr. C. Kulanthaivel

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant-Insurance Company against the award dated 12.02.2019, made in M.C.O.P. No. 14 of 2016, on the file of the IV Additional District Court, (Motor Accident Claims Tribunal), Bhavani.

2.The appellant is the respondent in M.C.O.P. No. 14 of 2016, on the file of the IV Additional District Court, (Motor Accident Claims Tribunal), Bhavani. The respondent filed the said claim petition, claiming a sum of Rs.3,00,000/- as compensation for the injuries sustained by him in the accident that took place on 15.06.2015.

Facts of the case:

3. According to the respondent, on 15.06.2015, at about 11.20 a.m, while he was riding his Motorcycle bearing Registration No. TN-52-D-5583 in Kovai to Salem National Highways Road, a Mahendra Maximo Van bearing Registration No. TN-28-AM-4581, driven by its driver in a rash and negligent manner, hit against the respondent near J.K.K. Nataraja Dental Hospital and caused accident. Due to the accident, the respondent suffered simple and grievous injuries all over the body. Immediately, after the accident, he was admitted in Government Hosptial at Komarapalayam for first-aid treatment and subsequently, admitted as in-patient at Trust Hospital, Erode for one month. After discharge, the respondent was taking treatment as out-patient till filing of the claim petition. The respondent spent Rs.1,50,000/- for medical expenses. The Doctor who attended the respondent and performed the surgeries advised the respondent to take rest for one year for the wounds to heal and bone to join.

3(a) The respondent was aged 46 years at the time of accident and was earning a sum of Rs.10,000/- per month. Due to the accident, the respondent was not able to walk, sit, stand and lift any weight and was often suffering from head ache. The respondent is unable to do any work as in the past and lost physical strength and it would amount to total permanent disability. The respondent has lost total earning capacity and is claiming Rs.3,00,000/- as compensation against the appellant, as insurer of the Motorcycle bearing Registration No. TN-52-D-5583. The appellant is liable to pay compensation to the respondent as claimed in the claim petition.

4. The appellant filed counter statement and contended that:

(i) Chapter XI of the Motor Vehicles Act (hereinafter referred to as 'the Act') empowers the Tribunal to deal with the third party claims only. The respondent is owner of the Motorcycle bearing Registration No. TN-52-D-5583 and he was not a third party. The claim of the respondent against his own insurer is not maintainable. The Tribunal has no jurisdiction to entertain the claim petition and respondent has no locus-standi to file the claim petition.

(ii) The claim petition under Section 163-A of the Act is not maintainable as the respondent is earning Rs.10,000/- per month, while the maximum income fixed under Schedule II of the Act is only Rs.40,000/- per annum.

(iii) While the respondent was driving his Motorcycle, the driver of the Mahendra Maximo Van bearing Registration No. TN-28-AM-4581 drove the said Mahendra Maximo Van in a rash and negligent manner and dashed against the respondent and caused accident and sustained injuries. The respondent gave a complaint to Komarapalayam Police Station against the driver of the

Mahendra Maximo Van and FIR was registered in Crime No. 227/2015 under Sections 279 and 337 of IPC. The charge sheet has been laid against the Mahendra Maximo Van driver and criminal case is pending against the driver before the Judicial Magistrate, Tiruchengode. The respondent is entitled to claim compensation only against the driver, owner and insurer of the Mahendra Maximo Van and not against the insurer of his vehicle and hence, the petition is not maintainable. The respondent has not impleaded the driver and owner of the Mahendra Maximo Van as parties to the proceedings and the petition is liable to be dismissed for non-joinder of necessary parties.

(iv) The appellant denied the nature of injuries and treatment taken by the respondent. The respondent failed to produce any document to substantiate his claim.

(v) The appellant denied the nature of avocation and income of the respondent and further contended that the compensation claimed is excessive.

(vi) The respondent filed application for amendment and amended the claim petition with regard to the income and stated that his income is only Rs.40,000/- per annum.

5.Before the Tribunal, the respondent examined himself as P.W.1 and marked 6 documents as Exs.P1 to P6. The appellant examined one Subramaniyan as R.W.1 and marked 2 documents as Exs.R1 & R2. The report of the Medical Board issued by the Erode Medical Board was marked as Ex.C1.

6.The Tribunal in view of the amended claim petition with regard to the income of the respondent as Rs.40,000/- per annum, held that the claim petition under Section 163-A is maintainable. The Tribunal accepting the contention of the respondent that Mahendra Maximo Van was not insured and he cannot recover the compensation, held that the appellant is liable to pay the compensation. The Tribunal awarded total compensation of Rs.1,35,840/- to the respondent.

7.Challenging the said award of the Tribunal dated 12.02.2019, made in M.C.O.P. No. 14 of 2016, the appellant-Insurance Company has come out with the present appeal.

8.The learned counsel appearing for the appellant contended that Section 163-A of the Act is specifically enacted under Chapter XI of the Motor Vehicles Act, 1988, with an intention to ensure immediate relief to the third party claimants. The Tribunal failed to see that the Act does not enable the owner/insured to maintain a claim petition against insurer, much less contrary to the terms of contract. The Tribunal failed to see that under Section 147 of the Act, the insurer is not required to cover the risk of insured/respondent owner. The

Tribunal failed to properly appreciate the evidence of R.W.1 and Exs.R1 and R2. The Tribunal failed to note that there is no jurisdiction to entertain the claim petition filed by the respondent. The judgment of the Hon'ble Apex Court reported in 2018 (2) TNMAC 149 (SC) [Shivaji and another Vs. United India Insurance Co. Ltd.] is under different facts and circumstances and it is not applicable to the present case. Hence, the Tribunal ought to have dismissed the claim petition, holding that owner/insured is not entitled to claim petition under Section 163-A of the Act.

8(a) The learned counsel appearing for the appellant further contended that as per Section 163-A of the Act, negligence or default of owner of the vehicle or vehicles need not be proved or of any other person. The Section 163-A of the Act does not mean that tort-feasor can claim against owner or insurer of the vehicle in which he was riding. The owner cannot maintain the claim petition against insurer, taking advantage of Section 163-A of the Act. The Tribunal must first decide the liability of owner in the claim made by the owner. The Hon'ble Apex Court in paragraph nos. 8 and 9 of the judgment reported in 2017 (2) TNMAC 753 (SC) [United India Insurance Co. Ltd., Vs. Sunil Kumar and another] has held that it is not open to the insurer to raise any negligence on the part of the victim, which means that it applies to only third party and not to owner/driver nor tort-feasor himself. Only when the insured is liable to pay compensation, the insurer can be directed to indemnify the insured. No claim petition can be directly made against the Insurance Company without the owner. The Hon'ble Apex Court in the judgment reported in 1998 (1) SCC 365 [Oriental Insurance Co. Ltd. v. Sunita Rathi,] and 2008 ACJ 1441 [Oriental Insurance Co. Ltd., Vs. Rajni Devi and others] has held that a person cannot be a claimant as well as the recipient.

8(b) The learned counsel appearing for the appellant, in support of his contention, relied on the following judgments:

(i) 2004 (5) SCC 385 [Deepak Girishbhai Soni and others v. United India Insurance Co. Ltd.]:

"67. 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) 2008 ACJ 1441 [Oriental Insurance Co. Ltd., Vs. Rajni Devi and others]:

"10. The liability under Section 163-A of the Act is on the owner of the vehicle as a person cannot be both, a claimant as also a recipient. The heirs of Janak Raj could not have maintained a claim in terms of Section 163-A of the Act. For the said purpose only, the terms of the contract of insurance could be taken recourse to."

(iii) 2012 (1) TN MAC 1 (SC) [National Insurance Company Vs. Sinitha and others]:

"15. The heading of Section 163A also needs a special mention. It reads, "Special Provisions as to Payment of Compensation on Structured Formula Basis". It is abundantly clear that Section 163A, introduced a different scheme for expeditious determination of accident claims. Expeditious determination would have reference to a provision wherein litigation was hitherto before (before the insertion of Section 163A of the Act) being long drawn. The only such situation (before the insertion of Section 163A of the Act) wherein the litigation was long drawn was under Chapter XII of the Act. Since the provisions under Chapter XII are structured under the "fault" liability principle, its alternative would also inferentially be founded under the same principle. Section 163A of the Act, catered to shortening the length of litigation, by introducing a scheme regulated by a pre-structured formula to evaluate compensation. It provided for some short-cuts, as for instance, only proof of age and income, need to be established by the claimant to determine the compensation in case of death. There is also not much discretion in the determination of other damages, the limits whereof are also provided for. All in all, one cannot lose sight of the fact, that claims made under Section 163A can result in substantial compensation. When taken together the liability may be huge. It is difficult to accept, that the legislature would fasten such a prodigious liability under the "no-fault" liability principle, without reference to the "fault" grounds. When compensation is high, it is legitimate that the insurance company is not

fastened with liability when the offending vehicle suffered a "fault" ("wrongful act", "neglect", or "defect") under a valid Act only policy. Even the instant process of reasoning, leads to the inference, that Section 163A of the Act is founded under the "fault" liability principle.

16. At the instant juncture, it is also necessary to reiterate a conclusion already drawn above, namely, that Section 163A of the Act has an overriding effect on all other provisions of the Motor Vehicles Act, 1988. Stated in other words, none of the provisions of the Motor Vehicles Act which is in conflict with Section 163A of the Act will negate the mandate contained therein (in Section 163A of the Act). Therefore, no matter what, Section 163A of the Act shall stand on its own, without being diluted by any provision. Furthermore, in the course of our determination including the inferences and conclusions drawn by us from the judgment of this Court in Oriental Insurance Company Limited vs. Hansrajbhai V. Kodala (supra), as also, the statutory provisions dealt with by this Court in its aforesaid determination, we are of the view, that there is no basis for inferring that Section 163A of the Act is founded under the "no-fault" liability principle. Additionally, we have concluded herein above, that on the conjoint reading of Sections 140 and 163A, the legislative intent is clear, namely, that a claim for compensation raised under Section 163A of the Act, need not be based on pleadings or proof at the hands of the claimants showing absence of "wrongful act", being "neglect" or "default". But that, is not sufficient to determine that the provision falls under the "fault" liability principle. To decide whether a provision is governed by the "fault" liability principle the converse has also to be established, i.e., whether a claim raised thereunder can be defeated by the concerned party (owner or insurance company) by pleading and proving "wrongful act", "neglect" or "default". From the preceding paragraphs (commencing from paragraph 12), we have no hesitation in concluding, that it is open to the owner or insurance company, as the case may be, to defeat a claim under Section 163A of the Act by pleading and establishing through cogent evidence a "fault" ground ("wrongful act" or "neglect" or "default"). It is, therefore,

doubtless, that Section 163A of the Act is founded under the "fault" liability principle. To this effect, we accept the contention advanced at the hands of the learned counsel for the petitioner."

(iv) 2017 (2) TNMAC 753 (SC) [United India Insurance Co. Ltd., Vs. Sunil Kumar and another]:

"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 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.

9. For the aforesaid reasons, we answer the question arising by holding that in a proceeding under Section 163-A of the Act it is not open for the Insurer to raise any defence of negligence on the part of the victim."

(v) 2013 (1) TN MAC 481 (SC) [Reshmakumari & Others Vs. Madan Mohan and another]:

"13.3. The peculiar feature of Section 163A is that for a claim made thereunder, the claimants are not 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 or owners

of the vehicle concerned. The scheme of Section 163A is a departure from the general principle of law of tort that the liability of the owner of the vehicle to compensate the victim or his heirs in a motor accident arises only on the proof of negligence on the part of the driver. Section 163A has done away with the requirement of the proof of negligence on the part of the driver of the vehicle where the victim of an accident or his dependants elect to apply for compensation under Section 163A. When an application for compensation is made under Section 163A the compensation is paid as indicated in the Second Schedule. The table in the Second Schedule has been found by this Court to be defective to which we shall refer at a little later stage."

(vi) 2017 (2) TN MAC 674 (DB) [Divisional Manager, United India Insurance Co. Ltd., Vs. R. Rekha and others]:

"17. The learned counsel for the IRDA has also brought to the notice of this Court the Indian Motor Tariff which came into effect from 30.06.2002, particularly in relation to Personal Accident Cover. According to the learned counsel, on payment of additional premium, the Insurance Company undertakes to pay compensation to the insured on the scale provided for the bodily injury, as follows:-

Details of injury	Scale of compensation
i) Death	100%
ii) Loss of two limbs or sight of two eyes or one limb and sight of one eye	100%
iii) Loss of one limb or sight of one eye	50%
iv) Permanent total disablement from injuries other than named above	100%

28. As pointed out by IRDA in their report, the Policy to compensate the owner of the vehicle by virtue of Compulsory Personal Accident Cover was introduced 15 years ago. In the year 2002, the sum of Rs.1,00,000/- envisaged under Compulsory Personal Accident Cover might be sufficient to meet the medical expenses for treatment of the injured owner of the vehicle to certain extent. However, now 15 years have lapsed and the cost of medical treatment has skyrocketed. Parallely, the country is witnessing a burgeoning vehicle

population due to which, not a single day passes without a road accident in which unfortunate victims silently suffer bodily injury or death. The death or bodily injury so suffered by the victims of motor accident not only paralyse their life, but also cripple the entire family or his or her dependants. In case the owner of the vehicle happened to be the breadwinner of the family, it will cause a dent in the financial source of the family. On the other hand, due to the negligence of the owner of the vehicle, if a third party suffers bodily injury or even death, such third party or his family members will get adequate compensation from the insurance company befitting to the pecuniary loss sustained by the injured or on account of the death of the deceased. On the contrary, if the owner of the vehicle himself sustain bodily injury or dies in a motor accident, due to his or her own negligence, the owner of the vehicle or his or her family members will not get compensation befitting to the actual pecuniary loss of the deceased or injured, but only a lump sum compensation of Rs.1,00,000/-. It is unfortunate that the owner of the vehicle who pays premium amount for the risks that may be confronted by the third party or due to any other factor, is not getting adequate compensation in the event of his or her death or bodily injury. Therefore, having regard to the above factual matrix, taking note of the escalation in the cost of living, particularly the cost of medical treatment, we direct the IRDA to enhance the Compulsory Personal Accident Cover from the existing Rs.1,00,000/- to at least not less than Rs.15,00,000/- so that the amount of Rs.15,00,000/- will add to some succor or solace to the victims of road accidents, who are the owner of the vehicle, who may incidentally sustain bodily injury or death. Further, an option can be given to the insured/owner of the vehicle to pay higher premium amount to get enhanced compensation over and above Rs.15,00,000/- in case the owner of vehicle so desires to such enhanced compensation in the event of any untoward motor accident which may result in bodily injury or death. However, before resorting to enhance the premium for getting compensation under the Compulsory Personal Accident Cover, IRDA shall also have consultation with all the stake holders. Such an exercise can be undertaken and completed by IRDA within a

period of six months from the date of receipt of a copy of this Judgment."

(vii) 2018 (2) TN MAC 149 (SC) [Shivaji and another Vs. Divisional Manager, United India Insurance Co. Ltd., and others]:

"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."

(viii) (2018) 9 SCC 801 [National Insurance Co. Ltd., Vs. Ashalata Bhowmik and others]:

"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."

(ix) I (2002) ACC 299 (SC) [New India Assurance Co. Ltd., Vs. C.M. Jaya and others]:

"7. On a careful reading and analysis of the decision in Amrit Lal Sood (supra), it is clear that the view taken by the Court is no different. In this decision also, the case of Jugal Kishore is referred to. It is held (i) that the liability of the insurer depends on the terms of the contract between the insured and the insurer contained in the policy; (ii) there is no prohibition for an insured from entering into a contract of insurance covering a risk wider than the minimum requirement of the statute whereby risk to the gratuitous passenger could also be covered; and (iii) in such cases where the policy is not merely statutory policy, the terms of the policy have to be considered to determine the liability of the insurer. Hence, the Court after noticing the relevant clauses in the policy, on facts found that under Section II-1(a) of the policy, the insurer has agreed to indemnify the insured against all sums which the insured shall become legally liable to pay in respect of death of or bodily injury to "any person". The expression "any person" would undoubtedly include an occupant of the car who is gratuitously traveling in it. Further, referring to the case of Pushpabai Purshottam Udeshi (supra), it was observed that the said decision was based upon the relevant clause in the insurance policy in that case which restricted the legal liability of the insurer to the statutory requirement under Section 95 of the Act. As such, that decision had no bearing on Amrit Lal Sood's case as the terms of the policy were wide enough to cover a gratuitous occupant of the vehicle. Thus, it is clear that the specific clause in the policy being wider, covering higher risk, made all the difference in Amrit Lal Sood's case as to unlimited or higher liability. The Court decided that case in the light of the specific clause contained in the policy. The said decision cannot be read as laying

down that even though the liability of the insurance company is limited to the statutory requirement, an unlimited or higher liability can be imposed on it. The liability could be statutory or contractual. A statutory liability cannot be more than what is required under the statute itself. However, there is nothing in Section 95 of the Act prohibiting the parties from contracting to create unlimited or higher liability to cover wider risk. In such an event, the insurer is bound by the terms of the contract as specified in the policy in regard to unlimited or higher liability as the case may be. In the absence of such a term or clause in the policy, pursuant to the contract of insurance, a limited statutory liability cannot be expanded to make it unlimited or higher. If it is so done, it amounts to re-writing the statute or the contract of insurance which is not permissible."

(x) 2013 (1) TN MAC 781 (SC) [New India Assurance Co. Ltd., Vs. Prabha Devi and others] -

"9. We have perused the judgment of this Court in the case of Dhanraj Supra. In that case, the appellant who was the insurer was travelling in the insured vehicle, which met with an accident. In the accident, the appellant as well as the other passengers received injuries. A number of claim petitions came to be filed. The appellant who was the insurer also filed a claim petition. The MACT held the driver of the Jeep responsible for the accident. In all the claim petitions filed by the other passengers, MACT directed that the appellant (the owner) as well as the driver and the Insurance Company were liable to pay compensation. Furthermore, in the claim petition filed by the appellant, the MACT directed the driver and the Insurance Company to pay compensation to the appellant. The aforesaid finding of the MACT was upheld by the High Court in the appeal filed by the Insurance Company. The Insurance Company was, in appeal before this Court challenging the judgment of the High Court awarding compensation to the owner of the insured vehicle. Taking into consideration the provision contained in Section 147 of the Act, this Court observed as follows :-

"8. Thus, 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. Section 147 does not require an insurance company to assume risk for death or bodily injury to the owner of the vehicle.

9. In the case of Oriental Insurance Co. Ltd. versus Sunita Rathi it has been held that the liability of an insurance company is only for the purpose of indemnifying the insured against liabilities incurred towards a third person or in respect of damages to property. Thus, where the insured i.e. an owner of the vehicle has no liability to a third party the insurance company has no liability also.

10. In this case, it has not been shown that the policy covered any risk for injury to the owner himself. We are unable to accept the contention that the premium of Rs.4989 paid under the heading "Own damage", the words "premium on vehicle and non-electrical accessories" appear. It is thus clear that this premium is towards damage to the vehicle and not for injury to the person of the owner. An owner of a vehicle can only claim provided a personal accident insurance has been taken out. In this case there is no such insurance." "

(xi) 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?

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.

5.4 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 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."

9. Per contra, the learned counsel appearing for the respondent contended that the respondent has filed claim

petition under Section 163-A of the Act, which is a special provision. When the claim petition is filed under Section 163-A of the Act, Section 147 of the Act is not applicable. When the claim petition is filed under Section 163-A, the claimant need not allege and prove the negligence. The Hon'ble Apex Court in the judgments reported in 2017 (2) TNMAC 753 (SC) [United India Insurance Co. Ltd., Vs. Sunil Kumar and another] held that in the claim petition filed under Section 163-A of the Act, it is not open to the Insurance Company to raise the issue of negligence. There is no provision under the Act which prevents the owner of the Vehicle who is insured to make a claim against his own insurer. The learned counsel appearing for the respondent submitted that the respondent has paid additional premium for personal accident claim and the contract has been entered into between the respondent and appellant. Therefore, he can maintain the claim petition for the personal injuries sustained in the accident. In the following judgments, it has been held that owner can maintain a claim petition against the insurer when premium was paid for personal accident claim:

(i) 2013 (1) TN MAC 325 [Bajaj Allianz General Insurance Co. Ltd., Vs. C. Ramesh]:

"70. Contract of Insurance under the Personal Accident Cover is direct and personal and it is between the insured and the Insurer, and unlike the claim by the third parties, the question of indemnifying the insured to pay compensation, on his behalf to third parties, does not arise. As Personal Accident Cover Policy is intended for the personal risks of the owner-cum-driver, in the event of injury or death, the Insurance Company is obligated to pay compensation, directly to the owner-cum-driver or the Legal Representatives, as the case may be. Therefore, the principles of law applicable to third party claims, cannot be made applicable, when there is a Personal Accident Cover Policy and that the insured, owner-cum-driver or the Legal Representatives, as the case may be, are entitled to receive compensation, if the terms and conditions of the Policy, are satisfied and when he has not suffered any disqualification, Personal Accident Cover Policy is not intended to cover, third party claims and therefore, expression "against any liability which may be incurred by him" occur in Section 147(1)(b) (i) is not applicable to Personal Accident Cover Policy, as it is not a liability incurred by the owner to pay compensation. But it is the liability of the Insurer to pay directly to the insured or the Legal Representatives, as the case may be."

(ii) 2013 (1) TN MAC 729 [National Insurance Co. Ltd., Vs. Krishnan]:

"23. In a recent decision of the Apex Court in National Insurance Co. Ltd., v. Balakrishnan reported in 2012 (2) TNMAC 637 (SC), the Managing Director of the Company travelled in a Car, sustained injuries in an accident, due to the rash and negligent driving of the car driver. A claim for compensation was made. The Claims Tribunal awarded compensation, holding that the owner of the car was a Company and that the injured, Managing Director travelled in the car only as a third party and hence, the Company was liable to pay compensation. The finding of the Tribunal was confirmed by the High Court. Testing the correctness of the judgment, the Insurance Company preferred an appeal to the Supreme Court, contending inter alia, that the claimant, being the Managing Director of the Company, as well as the Signatory in the Registration Certificate, as owner, the liability of the insurer is limited only to the extent stipulated in policy. However, the Managing Director has contended that that he had travelled in the car only as a third party and therefore, the Insurance Company is bound to indemnify the owner. Pointing out the difference in the Act Policy and Comprehensive Policy/Package Policy and taking note of the circulars issued by IRDA, a Statutory Authority, the Supreme Court, held as follows:

"17. At this stage, it is apposite to note that when the decision in Bhagyalakshmi and others v. United Insurance Co. Ltd., and another, 2009 (1) TNMAC 659 (SC), was rendered, a decision of High Court of Delhi dealing with the view of the Tariff Advisory Committee in respect of comprehensive/package policy had not come into the field. We think it apt to refer to the same as it deals with certain factual position which can be of assistance.

.....

20. It is also worthy to note that the High Court, after referring to individual circulars issued by various insurance companies, eventually stated thus:-

In view of the aforesaid, it is clear that the comprehensive/package policy of a two wheeler

covers a pillion rider and comprehensive/package policy of a private car covers the occupants and where the vehicle is covered under a comprehensive/package policy, there is no need for Motor Accident Claims Tribunal to go into the question whether the Insurance Company is liable to compensate for the death or injury of a pillion rider on a two-wheeler or the occupants in a private car. In fact, in view of the TACs directives and those of the IRDA, such a plea was not permissible and ought not to have been raised as, for instance, it was done in the present case.

21. In view of the aforesaid factual position, there is no scintilla of doubt that a comprehensive/package policy would cover the liability of the insurer for payment of compensation for the occupant in a car. There is no cavil that an Act Policy stands on a different footing from a Comprehensive/Package Policy. As the circulars have made the position very clear and the IRDA, which is presently the statutory authority, has commanded the insurance companies stating that a Comprehensive/Package Policy covers the liability, there cannot be any dispute in that regard. We may hasten to clarify that the earlier pronouncements were rendered in respect of the Act Policy which admittedly cannot cover a third party risk of an occupant in a car. But, if the policy is a Comprehensive/Package Policy, the liability would be covered. These aspects were not noticed in the case of Bhagyalakshmi (supra) and, therefore, the matter was referred to a larger Bench. We are disposed to think that there is no necessity to refer the present matter to a larger Bench as the IRDA, which is presently the statutory authority, has clarified the position by issuing circulars which have been reproduced in the judgment by the Delhi High Court and we have also reproduced the same.

.....

25. Though the learned counsel for the appellant-Insurance Company, contended that the coverage for payment of additional premium for owner-cum-driver, cannot be extended to the

occupant of the car, this Court is not inclined to accept the said contentions, in view of the recent decision of the Supreme Court in National Insurance Co. Ltd., v. Balakrishnan reported in 2012 (2) TNMAC 637 (SC) and taking note of payment of additional premium, this Court is of the view that when the owner-cum-driver has paid an additional premium of Rs.100/-, taking a coverage for the pecuniary and non-pecuniary losses, suffered by him, in an accident, arising out of the use of the vehicle, then he is entitled to seek for compensation."

9(a) There is no definition of 'victim' in the Act. Section 145 (g) of the Act deals with third party. The Act is a beneficial legislation and in the absence of any exclusion of owner from the ambit of victim, the owner can maintain a claim petition as victim, against his own Insurance Company when there is a privity of contract. The Division Bench of this Court in the judgment reported in 2019 (2) TN MAC 293 (DB) [Chinnathamani and othes Vs. Amman Granites, M.G. Colony, Harur Town & Taluk, Dharmapuri District and another], held that maximum limit of income fixed in the II Schedule of the Act was increased as per price index. The expression used in the Act is "accident arising out of use of motor vehicle" and not "accident caused by the motor vehicle". This has been held so in the judgment reported in 2018 (2) TN MAC 441 (MAD) [IFFCO Tokio General Insurance Co. Ltd., Vs. S. Ilangovan and another]. The disability sustained by the person shall first have same meaning as mentioned in the Workmen's Compensation Act, 1906.

9(b) When the injuries sustained by the victim is not a scheduled injury and disability, the Tribunal has to grant compensation as per the certificate issued by the Medical Practitioner. The judgments relied on by the learned counsel appearing for the appellant relates to Sections 140 and 147 of the Act and does not relate to 163-A of the Act or privity of contract under personal accident cover agreed by the insurer by receiving additional premium. 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 deals with under different context and not under Section 163-A of the Act and personal accident cover. The Smaller Bench while delivering the judgments, failed to take into account the judgments delivered by the Larger Bench. The judgments relied on by the learned counsel appearing for the appellant are not applicable to the facts of the present case.

9(c) The learned counsel appearing for the respondent further relied on the following judgments:

(i) 2017 (2) TN MAC 753 (SC) [United India Insurance Co. Ltd., Vs. Sunil Kumar and another]:

"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 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."

(ii) 2018 (2) TN MAC 441 (MAD) [IFFCO Tokio General Insurance Co. Ltd., Vs. S. Ilangovan and another]:

"22. At this juncture, it is pertinent to refer the decision of the Three-Judges Bench of the Hon'ble Supreme Court in Deepal Girishbhai Soni and others v. United India Insurance Co. Ltd., Baroda, reported in 2004(1) TN MAC (SC) 193, wherein, it has been held as under:

46. Section 163-A has an overriding effect and provides for special provisions as to payment of compensation on structured formula basis. Sub-section (1) of Section 163-A contains a non-obstante clause, in terms whereof the owner of the motor vehicle or the authorised insurer is 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.

23. In Section 163-A, the expression notwithstanding anything contained in this Act or in any other law for the time being in force has been used, which goes to show that the Parliament intended to insert a non obstante clause of wide nature which would mean that the provisions of Section 163-A would apply despite the contrary provisions existing in the said Act or any other law for the time being in force. Thus, Section 163-A of the M.V. Act covers cases where even negligence is on the part of the victim."

(iii) 2019 (2) TN MAC 293 (DB) [Chinnathamani and othes Vs. Amman Granites, M.G. Colony, Harur Town & Taluk, Dharmapuri District and another]:

"28. Section 163-A was introduced in the year 1994. The executive authority of the Central Government has the requisite jurisdiction to amend the Second Schedule from time to time. Having regard to the inflation and fall in the rate of bank interest, it is desirable that the Central Government bestows serious consideration to this aspect of the matter. In other words, the Central Government has been bestowed with duties to amend the Second Schedule in view of Section 163-A (3), but, it failed to do so for the last 25 years. Therefore, the Central Government has to consider amendment of the Second Schedule to the Act to rectify the mistakes crept therein and rationalise the compensation payable thereunder."

10. Heard the learned counsel appearing for the appellant as well as the respondent and perused the materials available on record.

11. The issue to be decided in the appeal is whether owner of the vehicle/insured can maintain the claim petition against his own insurer?

12. From the materials on record, the following are admitted facts:

(i) The respondent is the owner of the

Motorcycle bearing Registration No. TN-52-D-5583, insured with the appellant.

(ii) On 15.06.2015, while he was riding the Motorcycle, the Mahendra Maximo Van bearing Registration No. TN-28-AM-4581 dashed against the Motorcycle driven by the respondent and respondent suffered injuries in the accident.

(iii) The respondent filed claim petition under Section 163-A of the Act against the appellant only, who is the insurer of the vehicle belonging to the respondent.

(iv) The respondent did not file claim petition against the owner of the Mahendra Maximo Van bearing Registration No. TN-28-AM-4581.

13. The appellant disputes the claim of the respondent as to whether the respondent can maintain the claim petition against the appellant who is the insurer of the vehicle belonging to the respondent. The respondent disputes the contention of the appellant and contends that he can maintain the claim petition against the insurer of the Motorcycle viz., his own insurer.

14. It is the contention of the learned counsel appearing for the appellant that only when liability of the insured is decided and fixed, the liability of the insurer will arise. The liability of the insurer is only to indemnify the insured as per the insurance policy. According to the learned counsel appearing for the appellant, when the claim petition is filed under Section 163-A of the Act, the victim or legal heirs need not prove the negligence on the part of the driver/owner. When the owner himself is tort-feasor, he can not maintain the claim petition under Section 163-A of the Act against his own insurer. The respondent being the owner of the vehicle who alleges to be tort-feasor cannot be a claimant as well as the recipient. The learned counsel appearing for the appellant further contended that claim of the third party against the owner of the vehicle alone can be fastened on the insurer. The owner of the vehicle is not covered under statutory policy issued under Section 147 of the Act. To substantiate the said contention, the learned counsel appearing for the appellant relied on the following judgments, wherein the relevant portions are extracted above:

- (i) 2012 (1) TN MAC (1) SC
- (ii) 2013 (1) TN MAC 781 (SC)
- (iii) 2013 (1) TN MAC 481 SC
- (iv) 2008 ACJ 1441
- (v) 2004 (5) SCC 385
- (vi) (2018) 9 SCC 801
- (vii) 2002 ACC 299 (SC)
- (ix) 2020 (1) TN MAC 1 (SC)

15. In all the above judgments, the Courts have held that owners of the vehicle cannot maintain a claim petition, even under Section 163-A of the Act, against his own insurer.

16. The learned counsel appearing for the appellant contended that the Hon'ble Apex Court in the judgment reported in 2017 (2) TN MAC 753 (SC) [United India Insurance Co. Ltd., Vs. Sunil Kumar and another], held that adjudication under Section 163-A of the Act can be made without requirement of proving negligence on the driver/owner of the vehicles involved in the accident. The Hon'ble Apex Court in the subsequent judgment reported in 2018 (2) TN MAC 149 (SC) [Shivaji and another Vs. United India Insurance Co. Ltd.], following the earlier judgment reported in 2017 (2) TN MAC 753 (SC) referred to supra, has held that it is not open to the Insurance Company to raise the issue of negligence and if permitted to raise such issue, it would amount to defeating the intention of legislature. The learned counsel referring to paragraph no.8 of the judgment reported in 2017 (2) TN MAC 753 (SC) referred to supra, pointed out that the Hon'ble Apex Court had held that the negligence on the part of the owner/driver is not required to be adjudicated and contended that third party claimant need not plead and prove the negligence on the part of the driver/owner. The Hon'ble Apex Court did not hold that owner can maintain a claim petition against the insurer. In the subsequent judgment reported in 2018 (2) TNMAC 149 (SC) [Shivaji and another Vs. United India Insurance Co. Ltd.], the Hon'ble Apex Court followed the earlier judgment and did not give a finding that owner can maintain the claim petition against the Insurance Company for his own negligence.

17. In the judgments reported in 2008 ACJ 1441, 2012 (1) TN MAC 1 (SC), 2017 (2) TN MAC 674 (DB), (2018) 9 SCC 801, I (2002) ACC 299 (SC) and 2013 (1) TN MAC 781 (SC) (referred to above), the Courts have specifically dealt with the liability of the insurer. In these judgments, it has been held that as per the terms of statutory policy issued by the insurer, it is the liability of the insurer to indemnify the claim made against the insured by third parties. It has been held that the insured cannot claim compensation against his own insurer for his own fault, namely being tort-feasor. It has also been held that the insured cannot be claimant as well as recipient. This Courts have held that when a person borrows the two-wheeler, he steps into the shoes of the owner and he is not entitled to claim compensation from the insurer of the vehicle insured by the

owner. In these judgments, it is specifically held that owner and borrower of the vehicle who are the tort-feasors cannot maintain a claim petition against the insurer of the vehicle for their own default.

18.As far as the reliance on the case reported in 2017 (2) TN MAC 753 (SC) [United India Insurance Co. Ltd., Vs. Sunil Kumar and another] is concerned, the contentions of the learned counsel appearing for the appellant that the Hon'ble Apex Court has held that the claimants need not plead and prove the negligence on the part of the driver/owner and this finding means that 3rd party need not plead and prove the negligence, the Insurance Company cannot raise the plea of negligence on the claimants and that the Hon'ble Apex Court did not hold that the insured can maintain a claim petition against his own insurer, when he himself is a tort-feasor, have considerable force. In paragraph no.8 of the said judgment, the Hon'ble Apex Court has held that no negligence need be pleaded and proved against the driver/owner. In paragraph No.9 of the said judgment, the Hon'ble Apex Court has held that the Insurance Company is not entitled to raise the issue of negligence against the claimant. The reading of the entire judgment shows that the Hon'ble Apex Court has not held that the owner/driver can maintain the claim petition against his own insurer. On the other hand, the judgments relied on by the learned counsel appearing for the appellant have specifically held that owner and borrower of the vehicle from the owner is not entitled to maintain a claim petition under Section 163-A of the Motor Vehicles Act. The Hon'ble Apex Court has held that a person cannot be a claimant as well as recipient.

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.

21.The learned counsel appearing for the respondent apart from making submissions that owner of the vehicle is entitled to maintain a claim petition against his own insurer under Section 163-A of the Act, also contended that the claim petition filed by the respondent is maintainable as he has paid additional premium and has taken personal accident coverage and therefore, the appellant is liable to pay compensation as awarded by the Tribunal.

22.The liability of the insurer is only to indemnify the insured in respect of the claim made against the insured by the 3rd party. Under Section 147 of the Act, the insurer is not liable to cover the risk of owner and occupant of the four-wheeler. At the same time, the insured can pay extra premium to cover personal accident claim, pillion rider and occupants of four-wheeler. When insurer received extra premium to cover the risk of above referred persons, the policy is comprehensive policy. It is held in the judgments reported in 2017 2 TN MAC 674 (DB) [Divisional Manager, United India Insurance Co. Ltd., Vs. R. Rekha and others], 2013 1 TN MAC 325 [Bajaj Allianz General Insurance Co. Ltd., Vs. C. Ramesh] and 2002 ACC 299 (SC) [New India Assurance Co. Ltd., Vs. C.M. Jaya and others] that when extra premium is paid to cover personal claim, the insurer is liable to pay compensation directly to insured. The insurer is bound by the terms of policy which is a contract between insurer and the insured. In respect of personal accident coverage of owner of two- wheeler, the maximum compensation payable is only Rs.1,00,000/-. Even though the respondent did not make a claim against the appellant based on the extra premium paid for a personal coverage, in as much as he has paid extra premium for personal accident cover, it will be equitable and in the interest of justice to direct the appellant to pay a sum of Rs.1,00,000/- as compensation to the respondent under personal accident coverage.

23.In the result, the Civil Miscellaneous Appeal is partly allowed, holding that the insured owner of the vehicle cannot

maintain a claim petition against his own insurer even under Section 163-A of the Act and modifying the award of the Tribunal directing the appellant to pay a sum of Rs.1,00,000/- to the respondent under personal accident coverage. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

gsa

To

The IV Additional District Judge,
(Motor Accident Claims Tribunal),
Bhavani.

Copy to

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

C.M.A. No. 3414 of 2019

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