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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.12.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2626 of 2014
and M.P.No.1 of 2014

Bajaj Allianz General Insurance Company Ltd.
Represented by its Branch Manager
No.25/26, Prince Towers
4th floor, College Road
Nungambakkam, Chennai-600 006.

..Appellant

Vs.

1.Tamil Selvi

2.Minor.Ravichandran

(Represented by his next friend
and mother 1st respondent)

3.Indirani

4.Chinnathambi

5.K.Chinnathamam

(R5 remained exparte before the Tribunal
and hence, notice to R5 is dispensed with)

..Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 30.10.2012 made in M.C.O.P.No.661 of 2007 on the file of Motor Accident Claims Tribunal, Sub Court, Tirupattur.

For Appellant : Mr.J.Michael Visuvasam

For R1 to R4 : Mr.Pa.Sudesh Kumar

J U D G M E N T

This matter is heard through 'Video-conferencing'.

This Civil Miscellaneous Appeal has been filed by the appellant/Insurance Company challenging the award dated 30.10.2012 made in M.C.O.P.No.661 of 2007 on the file of Motor Accident Claims Tribunal, Sub Court, Tirupattur.



2.The appellant/Insurance Company is the 2nd respondent in M.C.O.P.No.661 of 2007 on the file of Motor Accident Claims Tribunal, Sub Court, Tirupattur. The respondents 1 to 4 filed the said claim petition claiming a sum of Rs.10,00,000/- as compensation for the death of one Thirunavukarasu, who died in the accident that took place on 05.08.2007.

3.According to the respondents 1 to 4, on the date of accident i.e., on 05.08.2007, at about 2.00 a.m., while the deceased Thirunavukarasu was travelling along with two others in a motorcycle bearing Registration No.TN-23-AT-0132 from Gudiyatham to Rajapalayam near Chinnakallupalli at Vaniyambadi to Tirupattur Main Road at high speed, dashed against a tamarind tree and thus, the accident has occurred. In the accident, the deceased sustained fatal injuries and died on the spot. Therefore, the respondents 1 to 4 have filed the above claim petition claiming compensation against the 5th respondent and the appellant/Insurance Company.

4.The 5th respondent, owner of the motorcycle remained exparte before the Tribunal.

5.The appellant/Insurance Company being insurer of the motorcycle filed counter statement denying the averments made in the claim petition and stated that at the time of accident, three persons travelled in the motorcycle, which is in violation of policy and permit conditions. F.I.R. is registered against the rider of the motorcycle and the charges against the rider of the motorcycle were abated as he died. The accident has occurred due to own negligence of the deceased. The deceased is not a third party as he rode the motorcycle. No third party claim will lie and also the deceased was not the owner-cum-driver of the vehicle and hence, the policy will not cover the liability. Therefore, the appellant/Insurance Company is not liable to pay any compensation to the respondents 1 to 4. The appellant/Insurance Company has also denied the age, avocation and income of the deceased. In any event, the 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 and one Velu, was examined as P.W.2 and seven documents were marked as Exs.P1 to P7. The appellant/Insurance Company examined one Mr.Kandeep Agarwal, as R.W.1 and marked the Insurance Policy with terms and conditions as Ex.R1.

7.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to the lorry coming in the opposite direction and directed the appellant/Insurance Company being insurer of the motorcycle to



pay a sum of Rs.6,16,000/- as compensation to the respondents 1 to 4.

8. Against the said award dated 30.10.2012 made in M.C.O.P.No.661 of 2007, the appellant/Insurance Company has come out with the present appeal.

9. The learned counsel appearing for the appellant/Insurance Company contended that the deceased was the rider of the motorcycle and he was not a third party. The accident has occurred and he died due to his own negligence. The above fact was mentioned in the F.I.R. based on the complaint given by P.W.2 and also in the averments made in the claim petition filed by the respondents 1 to 4. The Tribunal without properly appreciating the averments made in the claim petition and contents in the F.I.R. and evidence let in by the appellant, erroneously relied on the evidence of P.W.2, who deposed contrary to his complaint and averments in the claim petition. The evidence of P.W.2 is only an after thought. The Tribunal failed to consider the legal issues and erroneously entertained the claim petition filed under Section 166 of the Motor Vehicles Act by the legal heirs of the tort-feasor. The learned counsel for the appellant raised various grounds with regard to liability and contended that the Tribunal failed to consider the judgment of the Hon'ble Apex Court and this Court and erroneously fastened the liability on the appellant. The learned counsel further submitted that the owner of the vehicle paid additional premium for personal accident coverage. As per judgment of the Hon'ble Apex Court reported in 2020 (1) TN MAC 1 (SC) [Ramkhiladi and another Vs. United India Insurance Co. Ltd., and another], the appellants are entitled to compensation only for Rs.1,00,000/- as per personal accident coverage.

9(i). The learned counsel further contended that this Court, at the time of admission, while granting interim stay vide order dated 12.09.2014, directed the appellant to deposit a sum of Rs.4,00,000/- together with interest to the credit of M.C.O.P.No.661 of 2007. Accordingly, the appellant/Insurance Company has deposited a sum of Rs.4,00,000/- together with interest. This Court subsequently permitted the respondents 1 to 4 to withdraw a sum of Rs.1,54,000/-, i.e. the amount more than the personal accident coverage and prayed for granting permission to recover the amount withdrawn by the respondents 1 to 4 and also to withdraw the balance amount available in the deposit.

10. Per contra, the learned counsel appearing for the respondents 1 to 4 contended that the deceased lost his control due to bright light of the lorry coming in the opposite direction at high speed, dashed on the road side tamarind tree



and thus the accident occurred. P.W.2, who was also travelling in the motorcycle, an eye-witness deposed to that effect. The appellant has not examined any eye-witness. The Tribunal considering the evidence of P.W.2, held that the accident has occurred only due to lorry coming in the opposite direction. The Tribunal has given valid reason for said conclusion. There is no error in the award of the Tribunal directing the appellant to pay a sum of Rs.6,16,000/- as compensation to the respondents 1 to 4. In support of his contention, the learned counsel relied on the judgment of this Court reported in 2013 (3) MWN Civil 161 (National Insurance Company Limited vs. Krishnan) and contended that the respondents 1 to 4 are entitled to more than the restricted amount as per the personal accident coverage and prayed for dismissal of the appeal.

11.Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the respondents 1 to 4 and perused the entire materials on record.

12.From the materials on record, it is seen that it is the contention of the respondents 1 to 4 in the claim petition that the deceased was riding the motorcycle along with two others at high speed at the time of accident, dashed against the tamarind tree and died on the spot. To substantiate the said contention, they have examined P.W.2, who was travelling along with the deceased and marked F.I.R. as Ex.P1. F.I.R. was registered based on the complaint given by P.W.2. In the complaint, P.W.2 has stated that the deceased was riding the motorcycle at high speed and while turning at a curve, lost control and dashed on the tamarind tree on the road side. Contrary to the said statement in the complaint and averments in the claim petition, P.W.2 deposed in a different version that a lorry was coming in the opposite direction at high speed with bright light and due to the same, the deceased lost control and dashed against the tamarind tree. In view of this contradictory statement, the evidence of P.W.2 is not acceptable. The Tribunal without considering the averments in the claim petition and contents in the F.I.R., erroneously accepted the evidence of P.W.2 and held that the deceased cannot be held responsible for the accident and the accident has occurred due to lorry coming in the opposite direction. The said finding is erroneous.

13.From the materials on record, it is clear that the respondents 1 to 4 have admitted in the claim petition that the deceased rode the motorcycle at high speed and the accident has occurred due to negligence on the part of the deceased. Hence, the respondents 1 to 4 are not entitled to any compensation from the appellant. The contention of the learned counsel appearing for the respondents 1 to 4 that the respondents 1 to 4 have filed claim petition under Section 163-A of the Motor Vehicles



Act and therefore, the respondents 1 to 4 need not plead and prove the negligence is without merits.

14. 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.

15. 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 3rd 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 accident wherein the owner of the motor vehicle himself is involved. The decision further held that the question is no longer res integra. The liability under section 163-A of the MVA is on the owner of the vehicle. So a person cannot be both, a claimant as also a recipient, with respect to claim. Therefore, the heirs of the deceased could not have maintained a claim in terms of Section 163-A of the MVA. In our considered opinion, the ratio of the aforesaid decision is clearly applicable to the facts of the present case. In



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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."

17. 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 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."

18.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."

19.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 following judgment reported in 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.

5.2 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.



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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 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,



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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



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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.

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



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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 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



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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."

20.The Hon'ble Apex Court in the judgment reported in 2020 (1) TN MAC 1 (SC) [Ramkhiladi and another Vs. United India Insurance Co. Ltd., and another] cited supra, 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.

21.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



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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."

22. In the present case, from the materials available on record, it is seen that the deceased who was riding motorcycle borrowed the same from the 5th respondent, caused accident by hitting against the road side tamarind tree, sustained injuries and died. No other vehicle was involved. 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 respondents 1 to 4 are not entitled to compensation for the negligence of the deceased as the deceased was a tort-feasor.

23. The contention of the learned counsel appearing for the respondents 1 to 4 that the 5th respondent has paid additional premium for personal accident coverage, which is not disputed by the counsel for the appellant, the 5th respondent and the appellant are liable to pay compensation under personal accident coverage is acceptable. The Hon'ble Apex Court in the judgment reported in 2009 (2) TNMAC 169 (SC) [Ningamma & another v. United India Insurance Co. Ltd.], has held that the borrower of the motorcycle steps into the shoes of the owner. In the present case, the deceased borrowed motorcycle from the owner, 5th respondent herein and hence, the deceased stepped into the shoes of the owner, 5th respondent herein. In view of the judgment reported in 2009 (2) TNMAC 169 (SC) [Ningamma & another v. United India Insurance Co. Ltd.] referred to above, the respondents 1 to 4 are entitled to compensation under personal accident coverage. In the personal accident coverage for two wheeler, the upper limit is only Rs.1,00,000/- at that time. In view of the said contract, the appellant/Insurance Company is liable to pay only Rs.1,00,000/- as compensation to the respondents 1 to 4.

24. In the result, this Civil Miscellaneous Appeal is partly allowed and the award of the Tribunal is set aside. The learned counsel appearing for the appellant/Insurance Company submitted that the appellant has already deposited a sum of Rs.4,00,000/- together with interest and this Court by order dated 11.12.2014 made in M.P.No.2 of 2014 permitted the respondents 1 to 4 to withdraw a sum of Rs.1,54,000/-. In view of the above



submission, the appellant is entitled to recover Rs.54,000/- from the 5th respondent, owner of the vehicle. The appellant is permitted to withdraw the balance amount lying in the deposit to the credit of M.C.O.P.No.661 of 2007 on the file of Motor Accident Claims Tribunal, Sub Court, Tirupattur. The appellant is not entitled to recover the excess amount withdrawn from the respondents 1 to 4. The appellant is entitled to recover Rs.54,000/- paid excessively only from the 5th respondent, owner of the vehicle. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

kj

To

The Subordinate Judge
(Motor Accident Claims Tribunal
Tirupattur.

Copy To

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

+1cc to Mr.J.Michael Visuwasam,
Counsel for the Appellant S.R.No.40756

C.M.A.No.2626 of 2014
and M.P.No.1 of 2014

KJ(CO)
RGA(03/09/2021)