IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.09.2020

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THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A.No.547 of 2014
and M.P.No.1 of 2014

The Oriental Insurance Co.Ltd.,
Subagovindham Building,
Imperial Road,
Cuddalore - 2.

...Appellant/2nd Respondent

Vs.

1.S.Balamuugan ..1st respondent/Petitioner

2.A.Venkataramachandraprabu
..2nd Respondent/1st Respondent

Prayer: Civil Miscellaneous Petitions filed under Section 173 of Motor Vehicle Act, 1988 against the judgment and decree dated 08.07.2013 made in M.C.O.P.No.1456/2008 on the file of the MACT, I Additional Subordinate Court at Cuddalore.

For Petitioner : Mr.E.Rajadurai
for Mr.N.Vijaya Raghavan

For Respondents : Mr.Ramya Viswanatha Rao
for R.1
None appeared for R.2

JUDGEMENT

This appeal has been filed by the Insurance Company challenging the Award dated 08.07.2013, passed by the Motor Accident Claims Tribunal, I Additional Subordinate Court, Cuddalore, in M.C.O.P. No.1456 of 2008.

2.The appellant / Insurance Company has filed this appeal only on the ground that they are not liable to compensate the claim of the first respondent since the first respondent has stepped into the shoes of the owner by riding the insured vehicle at the time of the accident. According to the first respondent / claimant, when the first respondent borrowed the insured vehicle from the second respondent (insured) and while riding the said vehicle a cow crossed the road and he lost control of the vehicle and fell down from the same which resulted in injuries to him.

3.In this regard, the learned counsel appearing on behalf of the appellant cited the judgment of the Hon'ble Supreme Court in the case of Ningamma and Another vs. United India Insurance Co.Ltd., reported in [2009 ACJ 2020], wherein in paragraph Nos.18 and 19, it has been held as under:-

> "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 the present case, the deceased was not the owner of the motorbike in question. He borrowed the said motorbike from its real owner. The deceased cannot be held to be employee of the owner of the motorbike although he was authorised to drive the said vehicle by its owner, and therefore, he would step into the shoes of the owner of the motorbike.
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> 19.We have already extracted Section 163-A of the MVA hereinbefore. A bare perusal of the said provision would make it explicitly clear that persons like the deceased in the present case would step into the shoes of the owner of the vehicle. In a case wherein the victim died or

> where he was permanently disabled due to an accident arising out of the aforesaid motor vehicle in that event the liability to make payment of the compensation is on the insurance company or the owner, as the case may be as provided under Section 163-A. But if it is proved that the driver is the owner of the motor vehicle, in that case the owner could not himself be a recipient of compensation as the liability to pay the same is on him. This proposition is absolutely clear on a reading of Section 163-A of the MVA. Accordingly, the legal representatives of the deceased who have stepped into the shoes of the owner of the motor vehicle could not have claimed compensation under Section 163-A of the MVA"

4. In view of the settled law as laid down in the aforesaid decision, the claimant in the instant case also has stepped into the shoes of owner (insured), and therefore, he is not entitled for any compensation from the Insurance Company. The Tribunal has ignored the settled position of law and has erroneously mulcted the liability on the Appellant / Insurance Company. Hence the impugned Award has to be set aside.

5.For the foregoing reasons, the impugned Award dated 08.07.2013, passed in M.C.O.P.No.1456 of 2008, by the Motor Accident Claims Tribunal, (I Additional Subordinate Court, Cuddalore), is hereby set aside and the Civil Miscellaneous Appeal is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1.I Additional Subordinate Court,
Motor Accident Claims Tribunal,
Cuddalore.

2.The Section Officer,
Vernacular Section,
Madras High Court.

C.M.A.No.547 of 2014

GP(CO)
RMP(11/03/2021)