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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.10.2020

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

C.M.A.No.4858 of 2019

1. Joyesmarry
2. Selvaraj ... Appellants/Petitioners

Vs.

1. Velumani
2. Oriental Insurance Co., Ltd.,
Kumar Complex, 1st Floor,
146, West Car Street, Tiruchengode,
Namakkal District. ... Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree passed in M.C.O.P.No.99 of 2013 dated 30.11.2018, on the file of the Motor Accident Claims Tribunal / Subordinate Judge Court, Tiruchengode.

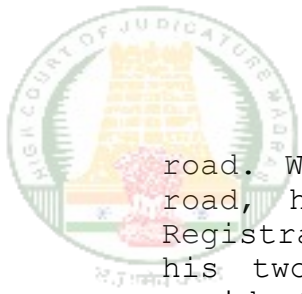
For Appellants : Mr.N.Eswaran
For Respondent 1 : Mr.M.Karthikeyan
For Respondent 2 : Mr.S.Arunkumar

J U D G M E N T

Not being satisfied with the compensation awarded by the Motor Accident Claims Tribunal, the claimants are before this Court with this appeal.

2. The claimants who had lost their son in a motor accident filed claim petition under Section 163(A) of the Motor Vehicles Act, 1966 claiming Rs.10,00,000/- as compensation. The Tribunal passed an Award of Rs.1,00,000/-, on the ground that, the deceased being the owner of the vehicle and the accident had taken place due to his negligence and therefore the claimants are entitled only to the extent of the contractual liability under the contract of the policy.

3. According to the claimants, the deceased by name Venice Crescent was riding a two wheeler in Erode to Perundurai main



road. While avoiding to hit a person who suddenly crossed the road, he turned the vehicle and at that time a car bearing Registration No.TN-39-AH-4905, owned by the first respondent hit his two wheeler and caused his death. At the time of the accident, the deceased was 24 years old studying in the third year Engineering Course. The claimants being the parents of the deceased claimed compensation of Rs.10,00,000/- against the owner of the car, the first respondent and the insurer of the two wheeler owned by the deceased second respondent.

4. The above claim was contested by the second respondent / insurance company on the ground that the accident had taken place due to the negligence of the deceased and hence the insurance company is not liable to pay compensation.

5. In order to prove their case, the claimants have examined three witnesses and marked as many as 12 documents and the respondents have not examined any witnesses, however marked the rough sketch.

6. The Tribunal after considering the materials available on record came to the conclusion that the accident had taken place due to the negligence of the deceased, who is the owner of the two wheeler, and the second respondent insurance company being the insurer of the two wheeler owned by the deceased and as the deceased has paid only the minimum personal accident claim, he is entitled only for a sum of Rs.1,00,000/- as compensation. Aggrieved over the same, the present appeal has been filed.

7. The learned counsel appearing for the appellants would submit that the claim petition has been filed under Section 163 (A) of the Motor Vehicles Act, 1988 and therefore the claimants need not to prove negligence and they are entitled for the compensation, as per the II Schedule of the Motor Vehicles Act, irrespective of the fact whether the claim has been made by the Legal Representatives of the owner of the vehicle or the third party without considering the same the Tribunal has awarded only a sum of Rs.1,00,000/-.

8. Per contra, the learned counsel appearing for the second respondent / insurance company would contend that the motor vehicle involved in the accident was owned by the deceased and the insurance company's liability is to indemnify the insured against the third party alone and the insured cannot maintain any claim against the insurance company and they cannot maintain the present petition.

9. That apart, the claimants cannot maintain a petition under Section 163(A) of the Motor Vehicles Act as the insured have paid for personal accident alone for a sum of Rs.50/- and



therefore he is entitled only for a compensation to the tune of Rs.1,00,000/- and the Tribunal has rightly granted the same and there is no illegality in the order of the Court below. In support of his contention the learned counsel relied upon a judgment of the Hon'ble Supreme Court in Ramkhiladi Vs. United India Insurance Co. Ltd., reported in 2020 (1) TN MAC 1 (SC) and Oriental Insurance Co. Ltd., Vs. Jhuma Saha (Smt) reported in (2007) 9 SCC 263.

10. I have considered the rival submissions and perused the records.

11. On perusal of the claim petition, it could be seen that the petition has been filed on the ground that at the time of the accident, the deceased was riding a two wheeler and the car owned by the first respondent herein has dashed against the two wheeler and caused his death. Therefore, seeking compensation, the parents of the deceased have filed the claim petition.

12. Even though it has been alleged that the accident had taken place due to the negligence of the driver of the car, the claimants have not impleaded the insurance company of the car as the party respondent, whereas they have impleaded only the insurer of the two wheeler alone as the second respondent. On perusal of the records, it could be seen that after the accident, one F.I.R. has been filed against the deceased by one Sourirajan, which has been marked as Ex.R1 stating that the deceased had driven the two wheeler in a rash and negligent manner and dashed against him and the said Sourirajan as well as the deceased suffered injuries. The Inspector of Police, Erode Taluk Police Station was examined as P.W.3, and she has also stated that, during the investigation they found that due to the rash and negligent driving of the deceased, the accident had taken place and further stated that after investigation, she filed the final report. There is no contra evidence to prove that the accident took place due to the negligent driving of the first respondent. Hence, the Tribunal after considering the materials available on record came to the conclusion that the accident had taken place due to the negligent driving of the deceased.

13. Once it has been decided that the accident had taken place due to the negligence of the deceased, the question which arises for consideration is whether in such circumstances, the second respondent insurance company is liable to pay compensation to the claimants. The liability of the insurance company is to the extent of indemnification of the insured against the injured person, a third party or in respect of damages to property. The insurer is not liable to indemnify the insured if the accident had taken place where the insured



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himself was driving the vehicle and due to his negligence the accident had taken place. The Hon'ble Supreme Court in Oriental Insurance Co. Ltd., Vs. Jhuma Saha (Smt) and Ors reported in (2007) 9 SCC 263 has held as follows:

"10. The deceased was the owner of the vehicle. For the reasons stated in the claim petition or otherwise, he himself was to be blamed for the accident. The accident did not involve motor vehicle other than the one which he was driving, the question which arises for consideration is that the deceased himself being negligent, the claim petition under Section 166 of the Motor Vehicles Act, 1988 would be maintainable.

11. Liability of the insurer-Company is to the extent of indemnification of the insured against the respondent or a injured person, a third person or in respect of damages of property. Thus, if the insured cannot be fastened with any liability under the provisions of Motor Vehicle Act, the question of the insurer being liable to indemnify insured, therefore, does not arise."

14. The above judgment has also been followed by the Hon'ble Supreme Court in the decision in National Insurance Co. Ltd., Vs. Ashalata Bhowmik and Ors reported in 2018 (9) SCC 801, wherein in paragraph 8 it has been held as follows:

"8. This Court in Oriental Insurance Co. Ltd., v. Jhuma Saha (Smt) and Ors. (2007) 9 SCC 263, was considering a similar case where the owner himself was driving the vehicle which due to his negligence dashed with a tree on the roadside as a result of which he died. The Court held that the claim petition filed by his LRs was not maintainable. It was held thus:-

"10. The deceased was the owner of the vehicle. For the reasons stated in the claim petition or otherwise, he himself was to be blamed for the accident. The accident did not involve motor vehicle other than the one which he was driving. The question which arises for consideration is that the deceased himself being negligent, the claim petition under Section 166 of the



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Motor Vehicles Act, 1988 would be maintainable.

11. Liability of the insurer Company is to the extent of indemnification of the insured against the respondent or an injured person, a third person or in respect of damages of property. Thus, if the insured cannot be fastened with any liability under the provisions of the Motor Vehicles Act, the question of the insurer being liable to indemnify the insured, therefore, does not arise."

15. In the instant case, it is the owner of the vehicle who met with the accident due to his own negligence and therefore the insurance company is not liable to pay any compensation to the claimants.

16. The next limb of the argument of the learned counsel appearing for the appellants is that the claimants have filed the petition under Section 163(A) of the Motor Vehicles Act and that there is no necessity to establish the negligence by the claimants and they are entitled for compensation. The above issue has been squarely covered in the recent judgment of the Hon'ble Supreme Court in Ramkhilladi and another Vs. United India Insurance Co. Ltd., reported in 2020 (1) TN MAC 1 (SC), wherein, it has been held as follows:

"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



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(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 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."

In such circumstances, the contention of the appellants cannot be countenanced and the provision of Section 163(A) of the Motor Vehicles Act cannot have any application with regard to the accident in which the insured himself involved, and insurer is not liable to compensate the deceased except to the extent of its contractual liability under the policy.

17. Considering the above circumstances, there is no merit in the appeal and the appeal is liable to be dismissed and accordingly dismissed. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

kk

To

The Subordinate Judge Court,
Motor Accident Claims Tribunal /
Tiruchengode.



Copy to

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

+lcc to Mr.M.Karthikeyan, Advocate Sr.33669
+lcc to M/s.S.Arunkumar, Advocate Sr.33649

C.M.A.No.4858 of 2019

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