

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 21.07.2020

Judgment Delivered on : 31.08.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH  
and  
THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.M.A.No.2494 of 2018  
and  
C.M.P.No.19043 of 2018

Royal Sundaram Alliance Insurance Co. Ltd.,  
Sundaram Towers,  
45-46, Whites Road,  
Chennai-14.

.. Appellant/2<sup>nd</sup> Respondent

Versus

1. Manickam, W/o Mayilsamy  
2. Mayilsamy, S/o Krishnasamy .. Respondents/Claimants  
3. Suganya, W/o Ramesh Kumar .. Respondents/1<sup>st</sup> Respondent

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act against the order and decree dated 22.11.2017 made in M.C.O.P.No.712 of 2014 on the file of the Motor Accidents Claims Tribunal/II Additional District Court, Tirupur.

For appellants : Mr. M. Krishnamoorthy  
For respondents : Mr. N.S. Sivakumar for RR-1 & 2  
No appearance for R-3

JUDGMENT

R.SUBBIAH, J

The appeal is heard through video-conferencing.

2. Challenging the Award, dated 22.11.2017 made in M.C.O.P.No.712 of 2014 on the file of the Motor Accidents Claims Tribunal / II Additional District Court, Tirupur, the present appeal is filed by the Insurance Company.

3. The respondents 1 and 2 herein are the claimants in the said M.C.O.P. filed before the Tribunal. They are the parents of the deceased Ramesh Kumar, who had died in the road accident that had occurred on 25.03.2013 at about 8 a.m. The third respondent is the wife of the deceased and she is the owner of the vehicle, namely car, bearing Registration No.TN-38-BZ-8885, which had been involved in the said road accident.

4. The main grievance put forward by the appellant/Insurance Company in this appeal is that the deceased in this case himself was the tort-feasor, who had hit the stone at a hectic speed while driving the car, as a result of which,

the car capsized. Since the third respondent being the wife of the deceased, is the owner of the said car, the appellant insurance company cannot be mulcted with the liability to pay the compensation to the claimants/respondents herein for the death of the deceased.

5. For the purpose of deciding the issues raised by the appellant in this appeal, the facts, based on which the claim petition was filed has to be looked into.

6. The respondents 1 and 2 herein are the claimants, who have filed the claim petition in MCOP No. 712 of 2014 before the Tribunal seeking compensation of Rs.40 lakhs for the death of their son Ramesh Kumar. According to the claimants, on 25.03.2013 at about 8 a.m. their son drove the Car bearing Registration No. TN-38-BZ-8885 from his house to Coimbatore. The said car stands in the name of his wife Mrs. Suganya, who is the first respondent in the claim petition. It is the case of the claimants that when the car was driven near Shanthi Gears Company, Kammanaickenpalayam to Karadivavi Road, M. Uthukuli, a van came from the opposite direction at a hectic speed in a rash and negligent manner and in order to avoid hitting the van, the deceased turned the vehicle towards the extreme left side of the road. At that time, the car hit a stone forcibly, which resulted in the bursting of the front tyre of the car. Eventually, the car capsized and the deceased sustained head injuries and died on the spot. According to the claimants, the deceased was aged 27 years and was employed as a Programmer Analyst in C.T.S. India Private Limited and earning a sum of Rs.35,000/- per month. Therefore, for having lost the deceased in the accident and the consequential loss of income suffered by the claimants, they have filed the instant claim petition.

7. The claim petition was resisted by the Insurance Company by taking a defence that the deceased himself was the tort-feasor and whose rash and negligence in driving the car had resulted in the accident. It was further contended that there was no other third party motor-vehicle involved in the accident and the accident was as a result of own negligence. Under such circumstances, at best, the claimants are entitled for personal accident claim of Rs.1 lakh only. It was also brought to the notice of the Tribunal that the insurance company has already paid the sum of Rs.1 lakh to the wife of the deceased viz., the first respondent in the claim petition and she has also received the same. Therefore, the Insurance Company prayed for dismissal of the claim petition.

8. Before the Tribunal, in order to prove the claim, on the side of the respondents 1 and 2/claimants, the father of the deceased was examined as P.W.1, besides one Mandhrachalam, who was an eye-witness to the occurrence was examined as PW2 and Exs.P-1 to P-7 were marked on the side of the claimants. On the side of the Insurance Company, the Manager of the Insurance Company was examined as R.W.1 and Exs.R-1 to R-8 were marked. The Tribunal, after analysing the evidence on record, has negatived the defence raised by the Insurance Company that the accident was the result of the negligence attributable on the part of the deceased, holding that the deceased could not have anticipated that the car would hit the stone or bursting of the

front tyre. Therefore, it was held that the accident had occurred beyond the control of the deceased and not due to his negligence. Having held so, the Tribunal proceeded to determine the compensation on the basis of the materials placed and ultimately awarded a sum of Rs.20 lakhs as compensation to the claimants with interest at 7.5% per annum from the date of claim petition till the date of payment. Aggrieved by the award passed by the Tribunal, the present appeal is filed by the Insurance Company.

9. The learned counsel for the appellant would mainly contend that at the time of accident, the Car was driven by the deceased himself. The deceased was not a paid driver and he was a driver of the car of his wife meant for their personal use. The accident had occurred only due to the rash and negligent driving of the car by the deceased inasmuch as no other vehicle was involved in the accident. Therefore, the risk was not covered by the policy under Section 147 of the Motor Vehicles Act. Hence, the legal heirs of the deceased cannot maintain the claim petition. At the best, the claimants are entitled for personal accident benefit of Rs.1 lakh, which amount has already been paid to the first respondent/wife. In such circumstances, the Tribunal ought to have dismissed the claim petition. However, the Tribunal, without proper appreciation of the above aspect has awarded a sum of Rs.20 lakhs as compensation and it needs to be interfered with by this Court.

10. Countering the above submissions, the learned counsel appearing for the respondents 1 and 2/claimants, who are the parents of the deceased, submitted that the vehicle in question namely Car bearing Registration No. TN 38 BZ 8885 stands in the name of their daughter-in-law namely the first respondent. She had entrusted the vehicle to her husband who drove the car on the fateful day. Therefore, it is evident that the deceased himself was not the owner cum driver of the car. The first respondent was the owner of the car and on her instructions, the deceased had driven the car. Therefore, the claimants are entitled for compensation under Section 163 of the Motor Vehicles Act, where they need not prove the negligence.

11. Keeping the submissions made on either side, we have carefully perused the entire materials available on record. It is an admitted fact that the vehicle in question namely Car bearing Registration No. TN 38 BZ 8885 stands in the name of the first respondent, who is the wife of the deceased in this case. When the deceased was driving the vehicle near M.Uthukuli Village, near Shanthi Gears Company, he swerved the vehicle to the extreme left side of the road purportedly to avoid hitting an on-coming van. In that process, the car hit a stone and capsized. In the impact, the deceased sustained head injuries and died on the spot. Thus, it is evident that no other motor vehicle is involved in the accident. Even the eye witness PW2 succinctly narrates the incident as spoken to by the claimants in the claim petition. Therefore, the evidence of PW2 only shows that the deceased himself was at fault in driving the vehicle in a negligent manner. Therefore, when the car driven by the deceased was not hit by any other motor vehicle, the insurance company cannot be mulcted with liability to pay the

compensation amount. In such event, the claimants are only entitled for a sum of Rs. 1 lakhs under the personal accident coverage. The deceased in such case cannot be treated as a third party to the accident and the liability to compensate the loss of the life of the deceased cannot be mulcted on the insurance company in this appeal, as the accident had occurred only due to own negligence of the deceased. Therefore, we feel that the insurance company in this appeal has to be relegated of their obligation to pay the compensation amount to the claimants/respondents herein.

12. It is to be observed that the claimants have not filed the Claim Petition under Section 163-A of The Motor Vehicles Act, which contemplates that in case the injured or deceased is involved in an accident by another motor vehicle whose identity is unknown, the claim petition can be filed under Section 163-A where the claimants are not required to plead or prove or establish that the death in respect of which the claim petition has been made due to any wrongful act or neglect or default of owner of vehicle concerned. When this was pointed out, the learned counsel for the respondents prayed this Court to permit them to amend the claim petition into one under Section 163-A of the Act even though it was filed under Section 166 of the Act. According to the learned counsel for the respondents/claimants, merely quoting a wrong provision of law should not be made to dis-entitle the claimants to get the compensation for the loss of their son and when especially the Motor Vehicles Act is one of the benevolent legislations framed by our legislature. Such a submission made on behalf of the claimants/respondents cannot be countenanced, in the light of the decision of the Honourable Supreme Court in the case of Ramkhiladi and another Vs. United India Insurance Company Limited and another, reported in 2020 (1) TN MAC 1 (SC). In that case, a similar prayer was made by the appellants and it was negatived by the Apex Court. Useful reference to paragraph No.5.9 can be quoted hereunder:-

"5.9. Now, so far as the submission made on behalf of the claimants that in a claim under Section 163-A 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. vs. Jhuma Saha (2007) 9 SCC 263: Dhanraj (supra); National Insurance Co. Ltd vs. Laxmi Narain Dhut (2007) 3 SCC 700 and Premkumari vs. 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 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."

13. In the light of the above decision of the Supreme Court it is evident that even though the vehicle in question namely car was in the name of his wife, the first respondent in the claim petition, the deceased cannot be construed as a paid driver warranting compensation to be paid by the Insurance Company. The compensation amount, in such case, cannot exceed Rs.1 lakh under the personal accident coverage. It was further held by the Supreme Court that the claim of the legal representatives of the tort-feasor is not maintainable even under Section 163-A of the said Act. Therefore, we are of the opinion that the claim petition filed by the legal representatives in this case is not maintainable. Under such circumstances, the Tribunal ought not to have entertained the claim petition filed by the legal representatives of the deceased.

14. Further, in the decision of the Larger Bench of the Supreme Court reported in 2004 (1) TN MAC 193 (SC) = 2004 (5) SCC 385 (Deepal Girishbhai Soni Vs. United India Insurance Company Ltd.), the Supreme Court had considered elaborately the scope and the class of persons entitled to file petition under Section 163-A of the Motor Vehicles Act and the amount payable in such proceedings. In that case, the Apex Court held that only a distinct and specified class of citizens, namely persons whose income per annum is Rs.40,000/- or less, can file application under Section 163-A and that the petition filed under Section 166 cannot be decided under Section 163-A.

15. Hence, the impugned order and decree dated 22.11.2017 made in M.C.O.P.No.712 of 2014 on the file of the Motor Accidents Claims Tribunal/II Additional District Court, Tirupur stands set aside. The Civil Miscellaneous Appeal is allowed. No costs.

Sd/-

Assistant Registrar(co)

cs/rsh

To

1. The Additional District Judge,  
Motor Accidents Claims Tribunal,  
II Additional District Court, Thirupur.

Copy to:

The Section Officer, VR Section, High Court, Madras.

+1cc to Mr.S.Siva kumar , Advocate SR.No. 28354

in C.M.A.No.2494 of 2018

A.SK(06.01.2021)