IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 15.03.2021

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

CMA.NO.1130 OF 2013
AND
M.P.NO.1 OF 2013

M/s National Insurance Co, Ltd.,
New No.96, Old No.164, 1st floor,
Kutchery road, Mylapore, Chennai 600 004.
.. Appellant/II respondent

Vs.

1. K.Deepa Rani ... I respondent/Claimant

2. K.Chandrasekar ... II respondent/I respondent

This Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988, against the decree and judgment dated 06.03.2012 passed in M.C.O.P.No.2309 of 2006 by the II Judge, Motor Accident Claims Tribunal, Court of Small Causes, Chennai.

For Appellant : Mr.J.Chandran

For respondents I & II : Mrs.Suguna,
for M/s C.&.K.Law firm

J U D G M E N T

Dissatisfied with the orders passed by the Tribunal, the insurance company has filed the present appeal to set aside the same.

2. The claimant has filed a claim petition under Section 166 of the Motor Vehicles Act before the Tribunal seeking compensation of Rs.10,00,000/- for the injuries sustained by her in a road accident that took place on 28.02.2006.

3. The brief case of the claimants is as follows: On 28.02.2006, at about 8.30 hours, the petitioner was travelling as a pillion rider in a motorcycle bearing registration No.TN-

21-Z-4370 along Annasalai Road, and while nearing Saidapet new bus stand, the rider of the motorcycle had driven the vehicle in a rash and negligent manner, thereby, she fell down from the motorcycle and sustained grievous injuries. According to the claimant, the rash and negligent riding of the rider of the motorcycle was the cause of accident and since the first respondent/ owner of the vehicle insured his motorcycle with the second respondent/ insurance company, both of them are liable to pay compensation.

4. The claim petition was resisted by the second respondent/ insurance company by filing counter affidavit.

5. Before Tribunal, the claimant and Dr.J.R.R.Thiagarajan were examined as PW1 and PW2 respectively and Ex.P1 to Ex.P11 were marked. On the side of the respondents, one witness was examined as RW1 and Ex.R1 to Ex.R5 were marked.

6. After analysing the evidence on record, the Tribunal has awarded a sum of Rs.2,56,300/- to the claimants. The compensation awarded under various heads are extracted hereunder.

Sl No	Heads	Amount in Rs.
1	Loss of earning power	1,72,800
2	Permanent disability	40,000
3	Loss of income during the treatment period	13,500
4	Transportation charges	2,000
5	Extra Nourishment	2,000
6	Damage to clothes and articles	1,000
7	Medical expenses	5,000
8	Pain and sufferings	20,000
	Total	2,56,300

Aggrieved over the compensation awarded by the Tribunal, the insurance company has filed the present appeal.

7. Heard the learned counsel for the appellant and the learned counsel appearing for the respondents. I have perused the materials on record.

8. The learned counsel appearing for the appellant/ insurance company submitted that the accident was occurred only due to the rash and negligent driving of the driver namely

S.Sureshkumar, who is none other than the husband of the claimant and in collusion with each other, the claim was made. He further submitted that the driver has committed tort and hence, he is held tortuous liable to pay compensation to the claimant and not by the insurance company. He also submitted that the insurance policy has covered only for Third Party and not for pillion rider and hence, the insurance company is not liable to pay compensation. Further he submitted that without following the precedents the Supreme Court as well as the High Court has awarded a huge amount as compensation and hence, he prayed to set aside the award passed by the Tribunal.

9. The learned counsel appearing for the respondents submitted that the second respondent namely Chandrasekar is the owner of the motorcycle and on the date of accident, one Sureshkumar, husband of the claimant borrowed the vehicle from him and had driven the vehicle along with her wife/claimant as pillion rider. He further submitted that as far as the rider is concerned, as a borrower, he is stepping into the shoes of the owner and though the claimant is his wife, she is a third party to the respondents and hence, the objection made by the insurance company was not considered by the Tribunal and has given findings that the pillion rider can claim compensation, as she is a third party and has rightly fixed the liability on the insurance company and has awarded compensation of Rs.2,56,300/-, which does not warrant any interference by this court.

10. Now the point for consideration is whether the appellant/insurance company is held liable to pay compensation?

11. POINT

It is not disputed by both the parties that on the date of accident, the offending vehicle was insured with the insurance company/appellant and the validity period of the insurance policy was in existence. According to the learned counsel for the appellant, the offending vehicle was covered under the Act policy, which covers the third party risk only and not covers the pillion rider risk and hence, the insurance company is not liable to pay compensation. To support his contentions, he relied upon a decision rendered by the Honourable Supreme Court in Ramkhiladi Vs. United Insurance Company and another in Civil Appeal No.9393 of 2019 dated 07.01.2020. In the above said judgment, the Honourable Supreme Court has considered the case filed under Section 163-A of the Motor Vehicles Act. However, as far as the liability is concerned, the Honurable Court has held at paragraph No.5.5 and 5.6. thus..

> 5.5. It is true that, in a claim under Section 163-A 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 163-A 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 163-A 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 163-A 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 herein above, 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), as 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 163-A 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 163-A 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.

12. In the present case on hand, the rider of the motorcycle is the husband of pillion rider and he borrowed the vehicle from his friend. No other materials or evidence placed before this court to prove the contention of the respondent/ claimant that the pillion rider also entitled for getting compensation under the "Act policy". There is some force on the contention of the counsel for the appellant that in an " Act policy" the insurance company is not liable to pay compensation for the bodily injuries suffered by a pillion rider in a motorcycle and only a comprehensive/package policy would cover the liability of the pillion rider in a motorcycle and hence the insurance company is not liable to pay compensation.

13. Accordingly, in the light of the above decision of the Honourable Supreme court and also inview of the aforesaid discussions, the liability of the insurance company would be as per the terms and conditions of the contract of insurance and hence, the insurance company/appellant is not liable to pay compensation to the pillion rider of the vehicle, who is not covered under the policy.

14. As far as the quantum of compensation awarded by the Tribunal is concerned, no arguments were advanced. The compensation awarded by the tribunal also seems to be very reasonable. Therefore. this court is of the view that there is no reason to set aside the quantum of compensation awarded by the tribunal as against the second respondent herein. The point is answered accordingly.

15. In the result,

(i) The civil miscellaneous appeal is allowed. No costs. The connected miscellaneous petition is closed.

(ii) The quantum of compensation awarded by the tribunal is upheld and the second respondent/owner of the motorcycle is directed to deposit the entire compensation as awarded by the Tribunal along with interest at the rate of 7.5% per annum within a period of six weeks from the date of receipt of a copy of this order.

(iii) On such deposit being made by the second respondent/owner of motorcycle, the claimant is entitled to withdraw the same, after following due process of law.

(iv) The appellant/Insurance Company is exonerated from paying the compensation amount and they are at liberty to withdraw the compensation amount, if already deposited by them.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

mst

To

1. The II Judge, Motor Accident Claims Tribunal,
   Court of Small Causes, Chennai.

2. M/s National Insurance Co, Ltd.,
   New No.96, Old No.164, 1st floor,
   Kutchery road, Mylapore, Chennai 600 004.

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

+1cc to Mr.J.Chandran, Advocate, S.R.No.16819
+1cc to Mr.C.Munusamy, Advocate, S.R.No.16866

CMA.No.1130 of 2013 and
M.P.No.1 of 2013

KJ(CO)
CS/18/10/2021