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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 28.04.2021

PRONOUNCED ON : 01.06.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

C.M.A.NO.1698 OF 2011

AND

MP.NO.1 OF 2011

National Insurance Co.Ltd.,
169, Anna Salai II nd Floor,
Chennai

... Appellant/2nd Respondent

Versus

1.P.Shameem Unissa

... 1st Respondent/Claimants

2.D.Sultan Shariff

... 2nd Respondent/Claimants

3.M.Kalyanasundaram

... 3rd Respondent/1st Respondent

Prayer:

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the award and decree dated 16.11.2010 made in M.C.O.P.No.447 of 2007 on the file of the Motor Accident Claims Tribunal, Chief Court of Small Causes, Chennai

For Appellant : Mr.S.Arunkumar

For Respondents

For R1 & 2: Mr.A.A.Venkatesan

R3 : No Appearance

J U D G M E N T

This appeal has been laid as against the award and decree dated 16.11.2010 made in M.C.O.P.No.447 of 2007 on the file of the Motor Accident Claims Tribunal, Chief Court of Small Causes, Chennai, thereby awarded the compensation to the tune of Rs.4,70,000/-.



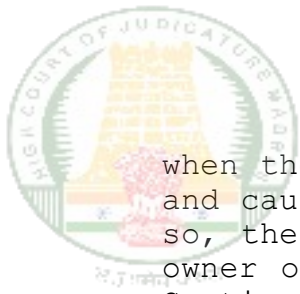
2. For the sake of convenience, the parties are referred to hereunder according to their litigative status before the Tribunal.

3. The case of the claimants is that on 19.06.2005, when the deceased was driving a car from Sengadu to Chennai along GWT road nearing Valarapuram Village in a careful manner, the back tire of the car was suddenly burst and as a result, the deceased could not able to control the car and it went to the wrong side of the road and capsized. Therefore, the driver of the car sustained fatal injuries and died. Hence, the legal heirs of the deceased filed claim petition under Section 163(a) of Motor Vehicles Act against the owner of the vehicle and insurer of the vehicle seeking compensation at Rs.22,04,500/-.

4. Resisting the same, the second respondent filed counter stating that the claim petition was filed under Section 163 (a) of Motor Vehicles Act and hence the annual income of the deceased cannot exceed Rs.40,000/- per month, whereas in the claim petition filed by the claimants stated that the income of the deceased at Rs.27,500/- per month. Therefore, the claim petition is liable to be dismissed. The claim petition itself is not maintainable as the deceased is the tort feaser and the manner of accident would envisage that unless the vehicle was driven in a reckless manner and at high speed, the car would not have somersaulted twice. The deceased borrowed the car owned by the first respondent and while he was driving the car, the accident took place. Therefore, when the deceased steps into the shoes of the owner of the vehicle, the claim petition is not maintainable under Section 163 (a) of MV Act, that too filed as against the owner of the vehicle and its insurer and as such sought for dismissal of the claim petition.

5. On the side of the claimants, they examined P.W.1 and P.W.2 and marked Ex.P.1 to Ex.P.6. On the side of the respondents, they examined R.W.1 and marked Ex.R.1 and Ex.R.2. On the basis of the evidence available on records and also considering the submissions made by the learned counsel appearing on either side, the Tribunal concluded that the insurance policy is a comprehensive policy and as such it covers the deceased and awarded compensation of Rs.4,70,000/- payable by the respondents. Aggrieved by the same, the second respondent came forward with the present appeal questioning the liability and the quantum of compensation.

6. The learned counsel appearing for the appellant would submit that the deceased was being tort feaser, the claimants are not entitled to maintain claim petition under Section 163(a) of MV Act. That apart, the policy does not cover the driver of the vehicle and as such no contract of liability in question



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when the deceased borrowed the vehicle from the first respondent and caused accident and succumbed to the injuries. When it being so, the claimants cannot maintain the claim petition against the owner of the vehicle and insurer of the vehicle, that too under Section 163 (a) of MV Act. He relied upon the following judgments in support of his contention:

(i) United India Insurance Company Vs. Rekha
reported in 2017 (2) Tanmac 674

(ii) Ramkhiladi and another Vs. United India Insurance
Co.Ltd and another reported in 2020 (1) TN MAC 1 (SC)

7. Per contra, the learned counsel appearing for the claimants submitted that the claim petition filed under Section 163(a) of MV Act. The second respondent is being insurer cannot raise any defence, since the claim under Section 163 (a) of MV Act provides for award of final compensation on a structured formula following provisions of second schedule appended to the Act. Therefore, it is not open for the insurer to raise any defence of negligence on the part of the victim. He further submitted that the insurance company is comprehensive one and policy covers the deceased. The second respondent examined RW1 and he clearly admitted that the compensation for the vehicle damages was given to the first respondent on the basis of non standard. But no documents were produced to prove the said contention. Therefore, the Tribunal rightly awarded the compensation payable by the second respondent, that too restricted the annual income at Rs.40,000/- as contemplated under Section 163(a) of MV Act and as such it does not require any interference from this Court. In support of his contention, he relied upon the judgment in the case of United India Insurance Co Ltd., Vs. Sunil Kumar reported in 2017 (2) TN MAC 753 (SC) and prayed for dismissal of the present appeal.

8. Heard Mr.S.Arun Kumar, learned counsel appearing for the appellant and Mr.A.A.Venkatesan, learned counsel appearing for the first and second respondents.

9. On 19.06.2005, when the deceased was driving a car belongs to the first respondent, the back tyre of the car burst and as a result the deceased could not able to control the car and went to the wrong side of the road and capsized twice. Due to the said accident, the deceased sustained fatal injuries and succumbed to injuries. Therefore, the claimants are being legal heirs of the deceased filed claim petition under Section 163 (a) of MV Act. The first respondent is the owner of the vehicle and the second respondent is the insurer of the vehicle owned by the first respondent. The learned counsel for the second respondent contended that when the deceased is being tort feaser, the



claimants are not entitled to maintain claim petition under Section 163 (a) MV Act. Further contended that the first respondent is being owner of the vehicle, and the second respondent being insurer of the vehicle, the deceased cannot be said to be third party in respect of borrowed vehicle. As per the policy, the deceased is not a third party and he is not entitled for any claim.

10. Admittedly, the deceased borrowed car from the first respondent and while he was driving the car, the accident took place and he succumbed to injuries. Therefore, the deceased has stepped into the shoes of the owner of the car and the claimants cannot file claim petition under Section 163 (a) of MV Act as against the owner of the vehicle. In this regard, the learned counsel for the appellant relied upon the judgment in the case of Ramkhiladi and another Vs. United India Insurance Co.Ltd and another reported in 2020 (1) TN MAC 1 (SC), wherein it is held as follows:

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, 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 opponentowner Bhagwan Sahay. Therefore, applying the



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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 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



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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.

11. In the above case, the deceased borrowed the vehicle and the accident took place due to negligent driving of another vehicle. The claim petition filed against the owner of the borrowed vehicle and not against the offending vehicle and its insurer. Therefore, the claim petition is not maintainable under Section 163(a) of MV Act, when the owner himself has involved in the accident. When the deceased stepped into the shoes of the owner of the borrowed vehicle, the claim petition against the owner and the insurer of the borrowed vehicle is not maintainable. The Hon'ble Supreme Court of India relied upon the judgment in the case of Ningamma Vs. United India Insurance Co. Ltd reported in 2009 (2) TN MAC 169 (SC). In the case on hand, the deceased borrowed the car from the first respondent who is the owner of the vehicle insured with the second respondent and committed accident, due to which he succumbed to injuries. Therefore, the deceased stepped into the shoes of the first respondent and as such the claim petition filed under Section 163(a) of MV Act is not maintainable as against the first respondent who is being owner of the vehicle and also the second respondent who is the insurer of the borrowed vehicle.

12. The learned counsel for the claimants contended that when the claim petition filed under Section 163 (a) of MV Act, the insurer cannot raise defence of negligence on the part of the victim. Further, the grant of compensation under Section 163 (a) of MV Act, on the basis of structured formula and it is in the nature of final award and the adjudication is thereunder required to be made without any requirement of any proof of negligence of the driver / owner of the vehicle involved in the accident. In support of his contention, he relied upon the judgment in the case of United India Insurance Co Ltd., Vs. Sunil Kumar reported in 2017 (2) TN MAC 753 (SC), wherein the Hon'ble Supreme Court of India held as follows:

3. In Sinitha's case (supra), a two judge bench of this Court understood the scope of [Section 163A](#) of the Act to be enabling an Insurer to raise the defence of 2 [(2011) 10 SCC 509] negligence to counter a claim for compensation. The principal basis on which the



13. In the above case, the Hon'ble Supreme Court of India held in respect of raising defence of negligence on the part of the victim. There is no quarrel that the provision of Section 163 (a) of MV Act to be contemplating the object behind introduction of Section 163 of MV Act, final compensation within limited time frame on the basis of the structured formula to over come situations where the claims of compensation on the



basis of fault liability was taking an unduly long time. Therefore it is not open for the insurer to raise defence of negligence on the part of the victims. Therefore, the above judgment is not at all applicable to the case on hand.

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14. On perusal of Ex.R2 revealed that it is comprehensive policy. The premium was paid to the third party, personal accident covers to unnamed passenger Number 8 amount to Rs.1,10,000/- and compulsory personal accident cover to owner cum driver amount to Rs.2,00,000/-. For employee paid premium at Rs.25/-. When the deceased stepped into the shoes of the owner of the borrowed car, as per the contract of the insurance, in the case of personal accident, owner / driver entitled to a sum of Rs.2,00,000/-. The relevant portion of the contract of the policy in respect of personal accident cover for owner cum driver is extracted hereunder:

Section III - Personal accident cover for owner-driver

1.The company undertakes to pay compensation as per the following scale for bodily injury / death sustained by the owner-driver of the vehicle, in direct connection with the vehicle insured or whilst driving or mounting into / dismounting from the vehicle insured or whilst travelling in it as a co-driver, caused by violent accidental external and visible means which independent of any other cause shall within six calendar months of such injury results in:

Nature of injury	Scale of compensation
(i) Death	100%
(ii) Loss of two limbs or sight of two eyes or one limb and sight of one eye	100%
(iii) Loss of one limb or sight of one eye	50%
(iv) Permanent total disablement from injuries other than named above	100%

Provided always that A) Compensation shall be payable under only one of the items (1) to (iv) above in respect of the owner-driver arising out of any one occurrence and the total liability of the insurer shall not in the aggregate exceed the sum of Rs.2 lakhs during any one period of insurance.



15. Accordingly, the appellant / second respondent is liable to pay a sum of Rs.2,00,000/- to the deceased under personal accident cover for owner cum driver. In this regard, it is relevant to rely upon the judgment in the case of National Insurance Co. Ltd Vs. Ashalatha Bhowmik reported in 2018(2) TN MAC 286 (SC), wherein it is submitted that the parties shall be governed by the terms and conditions of the Contract of Insurance and therefore, at the most, the claimants may be entitled to Rs.1 lakh only, the deceased being in the shoes of the owner.

16. As per the contract of insurance, the appellant / second respondent shall be liable to pay compensation to the claimants at Rs.2,00,000/- only, when the deceased was being in the shoes of the owner of the vehicle.

17. In view of the above, the claimants are entitled to a sum of Rs.2,00,000/- only payable by the appellant / insurance company. Accordingly, this civil miscellaneous appeal is partly allowed as follows:

(i) The award passed by the Tribunal is modified from Rs.4,70,000/- to Rs.2,00,000/-.

(ii) The award amount will carry the interest at the rate of 7.5% per annum from the date of the claim petition till the date of deposit.

(iii) The apportionment of the modified award amount is as follows:-

claimant / first respondent herein - 50%

claimant / second respondent herein - 50%

(iv) The appellant / insurance company is directed to deposit the award amount, less the amount, if any, already deposited, along with accrued interest within a period of six weeks from the date of receipt of copy of this Judgment.

(v) On such deposit, the claimants / respondents 1 & 2 herein are permitted to withdraw the amount awarded as above by filing proper application before the Tribunal.

(vi) If the appellant/ Insurance company already deposited the entire award amount as awarded by the Tribunal, the appellant/ Insurance company is permitted to withdraw the excess amount with accrued interest as modified by this Court.

(vii) There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Deputy Registrar (AD-II)

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Sub Assistant Registrar

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To

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

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

C.M.A.No.1698 of 2011

LN (CO)
CS/26/10/2021