IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date of Reserving Judgment 11.03.2021	Date of Pronouncing Judgment 29.03.2021

CORAM

THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.1269 of 2016
and
C.M.P.Nos.9776 of 2016 & 12345 of 2017

The Branch Manager,
The Oriental Insurance Co. Ltd.,
Micro Office, No.81-C, 1st Floor, K.R.C. Complex,
Chennai Salai,
Krishnagiri - 635 001. .. Appellant

Vs.

1.Arichandran
2.Dhrowpathi
3.Selvi
4.J. Venkatesan
5.P. Kalavathy

6.The Branch Manager,
The United India Insurance Co. Ltd.,
P.B. No.34, C.G. Complex, No.139, Kumaran Road,
Tiruppur - 641 601.

7.P. Govindaraj .. Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree made in M.A.C.T.O.P.No.243 of 2013 on the file of the Motor Accident Claims Tribunal (District Judge Special District Court for Motor Accident Claims Cases) at Krishnagiri dated 30.04.2015.

For Appellant : Mr. M. Krishnamoorthy

For Respondents : Mr. Mukund R. Pandiyan, for R1 to R3
Mrs. I. Malar, for R6
R4, R5 & R7 - Ex parte

J U D G M E N T

The fifth respondent before the Tribunal is the appellant herein. In the appeal, the Insurance Company challenge the award made in M.C.O.P.No.243/2013 on the file of Motor Accident Claims Tribunal, Krishnagiri on the ground of negligence, quantum and liability.

2. The respondents 1 to 3 herein are the legal heirs of Krishnan, driver of the car, who died in the accident. They filed M.C.O.P.No.243/2013 before the Tribunal claiming compensation by alleging that the deceased Krishnan was driving the car bearing registration No.TN 24 H 4142 from Erode towards Rayakottai after dropping the party at Erode. While he was proceeding in between Palacode to Rayakottai near Sarkar Thope Bridge, the driver of the lorry bearing registration No.TN 39 Z 6899 drove the same in a rash, reckless and negligent manner, at an uncontrollable speed, who was coming from Rayakottai side and proceedings towards Vellisandhai side lost control and dashed on the car approaching from opposite corner resulting in the accident. The said driver of the car sustained fatal injuries to his vital organs and died on the spot.

3. The owner of the car has lodged Ex.P1 FIR and he has stated the accident has happened as driver of car was driving without sleep. The Insurance Company of the lorry, before the trial Court, has contended that the accident has taken place due to the rash and negligent driving of the driver of the car namely the deceased Krishnan and hence neither the lorry owner nor the Insurance Company namely respondents 2 and 3, before the Tribunal are liable.

4. During the trial, widow of the deceased was examined as P.W.1 and one alleged occurrence witness was examined as P.W.2. On behalf of the present appellant, his assistant was examined as R.W.1 and also marked the Insurance Policy of the car. Thiru. Venkatesan, driver of the lorry bearing Registration No.TN-39-Z6899 was summoned by the third respondent/Insurance Company to depose evidence regarding negligence of the driver of the car, deceased Krishnan. The driver was examined as R.W.2. He had in his evidence deposed that on 30.07.2011 he was driving the lorry from Royakottai near Sarkar Thope Bridge and he was proceeding on Royakottai Palacode Road. From the opposite side, a car was approaching towards him. He had given signal through dipping of headlights of lorry and slowed down the lorry to avert an accident by head on collision. He applied sudden brake. Still the driver of the car lost control and hit on the lorry resulting in the accident. The accident was caused only by the negligence of the driver of the car. The accident was not due to his negligence.

5. The Sub Inspector who investigated the case, was examined as C.W.1 and marked Ex.C2 wherein, the case registered by the concerned jurisdictional police station at the instance of the owner of the car was closed as charge abated and the

same is reflected in Ex.C2. The tribunal on analysing the evidence of P.W.2 who is projected as if, he is occurrence witness has clearly observed that in view of the answer elicited in the cross examination of P.W.2 that he is a driver at taxi stand near Krishnagiri bus stand and he was unable to state how and why he went to the scene of the occurrence as if, he had witnessed the accident and hence doubted the alleged presence of P.W.2 at the place of occurrence.

6. In the absence of any positive evidence, the Tribunal has discarded the evidence of P.W.2, and on re-examination and re-appreciation, this Court finds that the finding rendered by the Tribunal in respect of P.W.2 does not suffer from any irregularity or illegality warranting interference in this appeal.

7. On perusing the evidence of R.W.2, the driver of the lorry, who is examined at the instance of the Insurance Company, it is stated that as stated supra, the accident had taken place due to the rash and negligent driving of the driver of the car only. At this juncture, it remains to be stated that the owner of the car in his counter statement before the trial Court (4^{th} respondent before the Tribunal) has stated that he had lodged the FIR wherein he had specifically averred that the car driver was driving the car in a rash and negligent manner and the same had resulted in the accident and hence on a combined reading of Ex.P1-FIR given by the owner of the car coupled with the evidence R.W.2, driver of the lorry involved in the accident, the Tribunal has categorically come to the conclusion that the accident had taken place due to the rash and negligent driving of the driver of the car namely the deceased himself.

8. On perusal of Ex.R1-Insurance Policy, the owner of the vehicle P.Govindaraj has paid premium only for third party and also the Personal Accident coverage for owner driver and however, he has not paid any additional premium for paid driver.

9. The recent judgment of Hon'ble Supreme Court in the case of Ramkhiladi and another v. United India Insurance Co. Ltd., and another 2020 (1) TN MAC 1 (SC) : 2020 (1) CTC 443 (SC), elaborately discussed the scope of claim petition under Section 163-A of the Motor Vehicles Act. Undoubtedly, the Special provision cannot be read in isolation and and the Apex Court considered Sections 147, 166 & 163-A of the Motor Vehicles Act. Thus, the Special Provision is to be read conjointly and in consonance with the object, purpose as well as the intention of the Legislature.

10. In the case before the Hon'ble Supreme Court, the finding was that 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. Thus the deceased cannot be said to be a Third party with respect to the insured vehicle. 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. The Insurance Policy covers the liability incurred by the insured in respect of death 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. Thus Section 147 does not require an Insurance Company to assume risk for death or bodily injury to the owner of the vehicle.

11. In the decision reported in (2020) 1 TN MAC 646, my learned brother Justice S.M.Subramaniam has held as follows:

> "It is crystal clear that the scope of Section 163-A of the Act cannot be expanded, so as to cover borrower of the vehicle, who stepped into the shoes of the registered owner and file claim petition under Section 163-A of the Act."

12. In view of the terms of the contract of Insurance, the Insurance Company is not liable to pay since the deceased himself is a wrongdoer and hence he is a tort-feasor by himself. Therefore, in the absence of any additional premium being paid under the Policy by the owner of the vehicle covering an insurance policy coverage extending to the paid driver, the Insurance Company is not liable to pay the compensation. Accordingly, the appellant / Insurance Company is exonerated from any liability.

13. Accordingly, the compensation arrived at by the Tribunal has to be paid by the owner of vehicle and not by the Insurance Company. Accordingly, this appeal is allowed. Consequently, connected miscellaneous petitions are closed. The Insurance Company is not liable to pay compensation to the claim petitioners.

14. In the result,

[i] The Civil Miscellaneous Appeal is allowed and the award passed by the Tribunal is hereby modified to the effect that the liability of the insurance company stands exonerated and the appellant/insurance company is not liable to pay any compensation to the claimants and if any amount is already deposited by the insurance company, it is permitted to withdraw the said amount.

[ii] The seventh respondent herein, who is the owner of the Car bearing Registration No.TN-24-H-4142, is directed to deposit the entire award amount along with interest at the rate of 7.5% per annum from the date of claim petition and costs, less the amount already deposited, if any, to the credit of M.C.O.P.No.243 of 2013 on the file of the Motor Accidents Claims Tribunal, (District Judge Special District Court), Krishnagiri, within a period of eight weeks from the date of receipt of a copy of this Judgment.

[iii] On such deposit, the respondents 1 to 3 herein/claimants are permitted to withdraw the award amount along with interest and costs, less the amount already withdrawn, if any.

[iv] There shall be no order as to costs.

Sd/-

Assistant Registrar (CS-VII)

//True Copy//

Sub Assistant Registrar

AT

To

The Motor Accident Claims Tribunal,
District Judge Special District Court,
Krishnagiri.

+1cc to Mr.R.Mukund R Pandiyan, Advocate, S.R.No. 20346

C.M.A.No.1269 of 2016

RGN(CO)
GN(23/09/2021)