IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.08.2021

CORAM

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A.No.1290 of 2016 &
CMP.No.9932 of 2016

The United India Insurance Company Ltd.,
Divisional Office IX,
SNS Complex, Near Telephone Exchange,
L.B.Road, Adyar,
Chennai – 600 020.

...Appellant/2nd Respondent

Vs

1.M.Raji @ Raj
2.R.Krishnavenu
3.R.Arun ... Respondents 1 to 3 /Claimants
4.Prabha V.Charles ...4th Respondent/1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act 1988 against the award and decree dated 26.02.2016 made in MCOP.No.3091 of 2009 on the file of the Motor Accident Claims Tribunal (Special Sub Judge No.1, Court of Small Causes, Chennai).

For Appellant : Mr.A.Dhiraviyanathan
For Respondents 1 to 3 : Mr.K.T.Sree Krishna Raaj

For Respondent 4 : Mr.R.Mayasundari

JUDGMENT
(Heard through video conferencing)

This appeal has been filed by the insurance company challenging the impugned award dated 26.02.2016 passed by the Motor Accident Claims Tribunal (Special Sub Judge-I, Small Causes Court, Chennai) in MCOP.No.3091 of 2009.

2. The Appellant Insurance Company has primarily challenged the impugned award questioning its liability to pay compensation as according to them, the deceased was himself a tort feasor and therefore, they are not liable to pay compensation under section 163A of the Motor Vehicles Act.

3. The respondents 1 to 3/claimants preferred a claim before the Motor Accident Claims Tribunal in MCOP.No.3091 of 2009 seeking compensation for the death of R.Kumaran who died as a result of an accident on 21.01.2008. In the claim petition, they have pleaded that on 21.01.2008 at about 12.45 hours, when the deceased R.Kumaran who was a rider of the motor cycle Tvs Centra bearing registration No.TN22-AK-2922 insured with the Appellant, an unknown two wheeler driven in a rash and negligent manner dashed against the insured two wheeler which resulted in the death of R.Kumaran.

4. The vehicle in which the deceased was the rider is owned by the fourth respondent. It can be inferred that the deceased had borrowed the vehicle from the fourth respondent, when the accident had happened. Under section 147 of the Motor Vehicles Act, the statutory liability is on the insurance company to pay compensation only in case of a third party.

5. This Court by its decisions in the case of Divisional Manager, Oriental Insurance co, Ltd., Vellore vs. R.Damodharan and another reported in 2020 (1) TNMAC 646 and National Insurance Company Limited vs. Rani and others reported in 2020 (2) CTC 703, after referring to the various decisions of the Hon'ble Supreme Court has held that if the accident victim had borrowed the vehicle from the owner (insured), he has stepped into the shoes of the owner of the vehicle (insured). Therefore, the liability to pay compensation by the Insurance company under section 163A of the Motor Vehicles Act will not arise, since the deceased himself is a tort feasor and is not a third party. Only in cases where the accident victim is a third party, the insurance company is statutory liable to pay compensation. In the case on hand, the respondents 1 to 3/claimants are also not entitled for any personal accident coverage, since the deceased was neither (a) the registered owner of the vehicle insured, (b) the owner cum driver of the insured vehicle named in the policy or (c) registered owner holding an effective driving license in accordance with provisions of law.

6. However, under the impugned award by total non application of mind to the settled law only on the ground that being a beneficial legislation, the Tribunal has held the Appellant Insurance Company liable to pay compensation to the respondents 1 to 3/claimants under section 163A of the Motor Vehicles Act. Even though under section 163A of the Motor Vehicles Act, no negligence needs to be proved, it will apply only to a third party and not to the present case where the deceased himself was a tort feasor and has stepped into the shoes of the insured by borrowing his vehicle. The involvement of the insured vehicle in the accident will alone not suffice

for the purpose of claiming compensation under section 163A of the Motor Vehicles Act. Apart from proving the involvement of the insured vehicle, the claimants must prove that the accident victim is a third party coming within the purview of Section 147 of the Motor Vehicles Act. Admittedly, in the case on hand, the deceased has stepped into the shoes of the insured by borrowing his vehicle and therefore, he is not a third party to make the Appellant Insurance company statutorily liable to compensate his dependants. Hence, the impugned award passed against the Appellant Insurance Company directing them to pay compensation at Rs.3,45,500/- together with interest and costs will have to be set aside.

7. For the foregoing reasons, the impugned award dated 26.02.2016 passed in MCOP.No.3091 of 2009 on the file of learned Special Sub Judge-I, Small Causes Court, Chennai is hereby set aside and this civil miscellaneous appeal is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(SSA)

//True Copy//

Sub Assistant Registrar

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To

The Special Sub Judge No.1,
Motor Accident Claims Tribunal,
Court of Small Causes, Chennai

Copy to:
The Seciton Officer,
The Vernacular Records,
High Court of Madras

C.M.A.No.1290 of 2016

NR(CO)
K.RK. (25.10.2021)