IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.03.2021

CORAM

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

CMA NO.2370 OF 2012

Sridhar
.. Appellant/Petitioner

Vs.

1. Saroja

2. National Insurance Co. Ltd.,
   1st Floor, Karthikeya Complex
   403, B-10, Mettur Main Road
   Bhavani, Erode District
.. Respondents/Respondents

Prayer: Civil Miscellaneous Petition filed under Section 173 of the Motor Vehicles Act against the decree and judgment dated 29.02.2012 passed in M.C.O.P.No.206 of 2010 by the Motor Accident Claims Tribunal cum Fast Track Court No.IV, Bhavani, Erode District.

For Appellant : Ms.T.Gayathri for Mr.C.Kulanthaivel

For Respondents : Mr.J.Chandran for R2

JUDGMENT

Aggrieved over the orders passed by the Tribunal, the appellant/claimant has filed the present appeal.

2. The appellant/claimant has filed a claim petition in MCOP No.206 of 2010 seeking compensation of Rs.3,00,000/- for the injuries sustained by him in a road accident that took place on 29.08.2009.

3. The brief case of the claimant is as follows:

On 29.08.2009. at about 00.35 a.m, when the claimant was driving an omni van bearing registration No.TN-34-C-9124 from Sathiyamangalam to Gobichettipalayam Main Road near Kothukadu Palam west to east, a lorry was coming opposite direction from east to west on the same road, in a rash and negligent manner and to avoid any mishappenings, the claimant suddenly turned the vehicle and the omni van was capsized in the valley and due to which, he sustained multiple, simple and grievous injuries all over the body. According to the claimant, since the first respondent/ owner of the omni van insured her vehicle with the second respondent/ insurance company, both of them are liable to pay compensation to them.

4. The insurance company/ second respondent has contested the claim petition by filing counter affidavit.

5. Before Tribunal, on the side of the claimant, the claimant was examined as PW1 and Ex.P1 to Ex.P9 were marked. On the side of the second respondent, one witness was examined as RW1 and copy of the insurance policy was marked as Ex.R1.

6. After analysing the evidence on record, the Tribunal has observed that the claimant was pleaded guilty and paid fine amount before the Judicial Magistrate Court in Crime No.622 of 2009. Therefore, based on the aforesaid admission, the Tribunal has rejected the claim petition. Challenging the said rejection order, the instant appeal has been filed before this Court.

7. The learned counsel for the appellant/claimant would submit that the Tribunal has wrongly observed that the claimant is a tortfeasor under Section 163-A of Motor Vehicles Act. The Tribunal ought not to have gone into the aspect of negligence but could have been proceeded to decide the amount of compensation. On the contrary, the Tribunal relying upon the admission of guilt made by the claimant in the criminal case, rejected the claim of the appellant. No documents have been produced to prove the

negligence for the cause of the accident. Further, in the criminal case, evidences were not corroborated by any witness. Therefore, the Tribunal ought to have independently considered that the claimant may claim compensation under Section 163-A of M.V Act and therefore, the order passed by the Tribunal has to be set aside.

8. The learned counsel for the second respondent/insurance company submitted that the Tribunal, relying upon the documents observed that the claimant, on his own admitted his guilt in the criminal case and no other corroborative evidence has been placed to claim the compensation under Section 163-A of the Act. He further submitted that under Section 163A, the policy does not cover for the owner of the vehicle or the vehicle being driven by the person unless he pays the premium. In the present case on hand, the appellant/claimant has not paid the premium for paying compensation to the owner of the vehicle or the vehicle has been driven by the owner. The learned counsel for the respondent insurance company relied on the decision of the Hon'ble Supreme Court in RAMKHILADI AND ANOTHER VS. UNITED INDIA INSURANCE CO. LTD. AND ANOTHER [2020 (1) TN MAC 1 (SC)] to contend that when the claimant borrowed the vehicle from the owner, he entered into the shoes of the owner of the vehicle, thus, he cannot maintain a claim under Section 163-A of the Act, against the owner and Insurer of the vehicle. Therefore, the appellant/Insurance Company is not liable to pay compensation to the claimant.

9. In the aforesaid decision, the Hon'ble Supreme Court has held that “the appellant has filed a claim petition before the Tribunal and on appreciation of evidence, the Tribunal answered in favour of the claimants and held that the death of the deceased Chotelal alias Shivram had occurred from the motorcycle involved in the accident and the said motorcycle was insured with the respondent insurance company, the insurance company is liable to pay the compensation under Section 163-A of the Act. Consequently,by the judgment and award dated 24.02.2009, the learned Tribunal partly allowed the said claim petition. Challenging the said award, the insurance company filed an appeal and the Hon'ble High Court has allowed the appeal filed by the insurance company to quash the order passed by the Tribunal”. When the matter came before the Hon'ble Supreme Court, it has been held as follows:

> “There is no specific finding whether the deceased driver was in employment of the opponent Bhagwan Sahay or not. Even otherwise, no evidence is led by the claimants to prove that the deceased driver was in employment of the opponent owner Bhagwan Sahay. Despite the above while answering Issue No.4 there is some observation made by the learned Tribunal that the deceased driver was in employment of the opponent owner Bhagwan Sahay, which is not supported by any evidence on record. Under the circumstances, the deceased driver cannot be said to be in employment of the opponent owner Bhagwan Sahay and, therefore, he can be said to be permissible use and /or borrower of motor vehicle owned by the opponent owner Bhagwan Sahay.
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> In the present case, as the claim under Section 163A of the Act was made only against the owner and the 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 being a third party to the said vehicle”.

Therefore, in the light of the aforesaid decision of the Hon'ble Supreme Court on reverting back to the present case on hand, the mother is the owner of the vehicle and the vehicle was driven by the son and therefore, no policy was covered for claiming compensation from the insurance company. The vehicle while turning left side, it was capsized. Therefore, the claim petition under Section 163-A of the Act, where there is no policy is covered and the owner of the vehicle is the mother and the son had driven the vehicle and they are also jointly driver cum owner of the insurance company and hence, the claim petition filed by the claimant is not maintainable under Section 163-A of the Act.

10. The learned counsel for the appellant has relied upon the judgment of the Hon'ble Supreme Court in the case of "Shivaji and another v. Divisonal Manager, United India Insurance Co. Ltd., reported in 2018(2) TN MAC 149, on the facts of the case therein. In the aforesaid decision, the Hon'ble Supreme Court has held that "the appellants are parents of Shaji Shivaji Dudhade, who was the driver of a Car bearing Registration No.MH-06-W-604, which met with an accident on 15th June 2010. The accident occurred when the Car dashed into a Truck, bearing Registration No.KA-25-B-5363, resulting in his death, the death of two other persons and injuries to two more person, all of whom were travelling in the Car".

In the above case, two vehicles were involved. But, in the present case on hand, the accident was happened due to the negligent driving of the claimant himself on the left side and due to which, the vehicle was capsized. No other opponent vehicle was involved in this case. Therefore, as per the decision of the Hon'ble Supreme Court in the case of RAMKHILADI AND ANOTHER VS. UNITED INDIA INSURANCE CO. LTD. AND ANOTHER [2020 (1) TN MAC 1 (SC), the appellant/claimant is not entitled for any relief in the instant appeal and the Tribunal has rightly rejected the claim petition filed by the appellant/claimant and there is no merits in the appeal and it is liable to be dismissed.

11. Accordingly, the judgment and decree dated 29.02.2012 passed in M.C.O.P No.206 of 2010, on the file of the Motor Accident Claims Tribunal/ Fast Track Court No.IV, Bhavani, Erode District, stands confirmed and this Civil Miscellaneous Appeal stands dismissed. No costs.

Sd/-
Assistant Registrar(CO)

// True Copy //

Sub Assistant Registrar

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To

1. The Motor Accident Claims Tribunal
   cum Fast Track Court No.IV,
   Bhavani, Erode District.

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

+1cc to Mr.C.Kulanthaivel, Advocate, S.R.No.19858

+1cc to Mr.J.Chandran, Advocate, S.R.No.20660

CMA No.2370 of 2012

PP(CO)
RLP(07/09/2021)