IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 02.03.2021
PRONOUNCED ON : 16.04.2021

CORAM:
THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.2698 of 2015
and
MP.No.1 of 2015

The National Insurance Company Limited,
No.165, Nethaji Road,
Manjakuppam, Cuddalore. ... Appellant/R2 in Tribunal below

Vs.

1.V.Viji
2.Panneerselvam ...Respondents/Petitioner and R1 in Tribunal below

PRAYER: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree passed in MCOP.No.3223 of 2013, by the Motor Accidents Claims Tribunal, learned Special Subordinate Judge, Cuddalore, on 05.06.2015.

For Appellant : Mr.S.Arunkumar
For R1 : Mr.R.Natarajan
For R2 : set ex-parte in the Lower Court

JUDGMENT
(This case has been heard through video conference)

The Appellant herein is the Insurance Company.

2.Brief facts of the case are as follows:

(a)On 12.05.2013 at about 08.15 p.m., while the first respondent herein/claim petitioner was riding motorcycle of the second respondent herein bearing Registration No. PY-01/AP-9340 on Panruti - Salem main road, at Panruti, a Pedestrian suddenly crossed the road, to avoid the accident the first respondent herein/claim petitioner turned the vehicle and colluded with a car and resulted in the accident. Due to the accident the first respondent herein/claim petitioner thrown out of his motorcycle and sustained grievous injuries and multiple fractures all over his body and head.

(b).Hence, the first respondent herein has filed claim petition in MCOP.No.3223 of 2013, before the learned Sub-Judge, Cuddalore, claiming compensation for the injuries sustained in the Road Traffic Accident.

3.Per contra, the Insurance Company has stated that as per FIR on the date of accident i.e., on 12.05.2013, when the first respondent herein/claim petitioner was riding his motorcycle bearing Registration No.PY-01-AP-9340 slowly in Panruti to Salem main road near municipal office one Tata Sumo vehicle bearing Registration No.TN-31-F-0841 came in the opposite direction in a rash and negligent manner and dashed against the first respondent herein/claim petitioner and hence, the he sustained grievous injuries. By mentioning the said facts complaint was given by the second respondent herein and on that basis FIR was registered against the driver of Tata Sumo vehicle bearing Registration No. TN-31-F-0841 under Crime No.428 of 2013 on 15.05.2013 by Panruti Police. So when the accused is driver of Tata Sumo bearing Registration No.TN-31-F-0841 vehicle, and when he is the accused MCOP should have filed only against the owner of Tata Sumo bearing Registration No. TN-31-F-0841 with its Insurance Company only.

4.Before the Tribunal during the course of examination, on behalf of the claim petitioner, he himself was examined as PW1 and documents were marked as Exs.P1 to P7 though him and Dr.R.Venugopal was examined as PW2 and documents were marked as Exs.P8 & P9 and on behalf of the Insurance Company one Velmurugan, Investigation Officer, was examined as RW1 and marked Ex.R1/Investigation Report on 31.03.2014. On the side of the Insurance Company, a petition under Section 170 of Motor Vehicles Act filed and allowed.

5.The Tribunal has considered the claim petition under Section 163(A) of the Motor Vehicles Act and held that the Insurance Company is liable to pay compensation and awarded a sum of Rs.2,07,350/- as compensation. Aggrieved against the same, the Insurance Company has filed this Civil Miscellaneous Appeal.

6.Heard both the learned counsels and perused the materials placed on record.

7.The learned counsel for the appellant/Insurance Company would contend that the claim petitioner/injured in the incident is the younger brother of the owner of the vehicle bearing registration No.PY-01-AP-9340 and he borrowed the vehicle from his brother and on his own accord, in order to avoid the pedestrian being hit who suddenly crossed the road, dashed against the Tata Sumo. He would further submit that the claim petitioner himself is a tort feasor and borrower of the vehicle cannot claim compensation by filing a petition under Section 163(A) of the Motor Vehicles Act.

8.As pointed out by the learned counsel for the appellant/Insurance Company, the Tribunal has not gone into the factum of the accident and manner of the accident. As per the evidence of the PW1/claim petitioner, by his own accord, without involvement of any other vehicle, he dashed against the car and he has filed a claim petition against the Insurance Company of his own vehicle, which he has driven at the time of the accident. The second respondent remained ex-parte. The claim petitioner is a borrower of the vehicle and hence, he steps into the shoes of the owner of the vehicle.

9.This Court had an occasion to consider CMA.No.1269 of 2016, dated 29.03.2021 and wherein it was observed as under:

> "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 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.
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> 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."

And hence, the claim petitioner/injured being the borrower of the vehicle and having steps into the shoes of the owner of the vehicle, cannot maintain a petition under Section 163(A) of the Motor Vehicle Act and hence, the compensation awarded by the Tribunal as against the Insurance Company is hereby set aside.

10.Accordingly,the Civil Miscellaneous Appeal is partly allowed to the limited extent as indicated above and the liability on the part of the Insurance Company as fixed by the Tribunal in MCOP.No.3223 of 2013 is hereby set aside and the Insurance Company is directed to withdraw the compensation amount awarded by the Tribunal, if already deposited any. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-

Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

Dua

To

The Motor Accident Claims Tribunal,
Special Subordinate Judge, Cuddalore.

Copy To

The Section Officer,
VR Section,
High Court, Madras.

+1cc to Mr.S.Arunkumar, Advocate SR.No.23159
+1cc to Mr.R.Natarajan, Advocate SR.No.22900

C.M.A.No.2698 of 2015
and
MP.No.1 of 2015

SSV(CO)
GN(23/11/2021)