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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date of Reserving Judgment 11.03.2021	Date of Pronouncing Judgment 23.03.2021

CORAM

THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.370 of 2015
and
M.P.No.1 of 2015

The Oriental Insurance Company Limited,
Aubagovindham Building, Imperial Road,
Cuddalore. .. Appellant/2nd Respondent

Vs.

1.B. Balamurugan ... 1st Respondent/Petitioner

2.B. Balasubramanian .. 2nd Respondent/1st Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the decree and judgment dated 5th day of November, 2014 made in M.C.O.P.No.618 of 2011, on the file of Motor Accident Claims Tribunal (I Additional Sub Court), Cuddalore.

For Appellant : Mr. K. Vinodh

For Respondents: Ms. Ramya Rao, for R1
for Mr. A.N. Viswanatha Rao
R2 – Ex-parte

J U D G M E N T

The Insurance Company is the appellant herein. The first respondent-Balamurugan who sustained injuries in the road accident has filed M.C.O.P.No.618/2011 before the Motor Accident Claims Tribunal, Cuddalore.

2. The case of the claim petitioner is that:

(i) On 19.02.2011 at about 9.00 p.m, while the petitioner was riding the 1st respondent's motorcycle bearing Registration No.TN 31 BZ 2134 at his extreme left hand side of the Vridhachalam – Cuddalore main road, at Mettukuppam, a dog suddenly crossed the road. The petitioner tried to avoid the accident but due to the sudden cross of the dog, he could not avoid the accident. The motorcycle hit against the dog and resulted in the accident. Due to the accident, the

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petitioner/Balamurugan sustained grievous injuries and multiple fractures all over his body and head. The claim application is filed under Section 163 (A).

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3. The Tribunal has accepted the case of the claim petitioner and awarded compensation of Rs.3,05,000/- and hence, the appeal. The appeal is preferred by the Insurance Company on the ground of liability as well as quantum of compensation awarded by the Tribunal.

4. Heard both sides and perused the records.

5. The sole point for consideration in this appeal is the injured / claimant is the borrower of two wheeler and by his own act of negligence, he dashed against a dog and as a result of which, he fell down and sustained grievous injuries and multiple fractures all over his body and head.

6. As per Ex.R1/Insurance Policy, additional premium amount was paid only in respect of owner cum driver but not in respect of borrower of the vehicle and hence, the learned counsel for the appellant would draw my attention to the decision of the Hon'ble Supreme Court reported in [i] (2009) 2 TN MAC 169 (SC) in Ningamma & another Vs. Uniter India Insurance Company Ltd., and [ii] (2020) 1 TN MAC 1 (SC) in Ramkhiladhi and another Vs. United India Insurance Co. Ltd., and also a decision of this Court reported in (2020) 1 TN MAC 646 in Divisional Manager, Oriental Insurance Co. Ltd., Vellore Vs. R.Damodharan and another. By relying on the above decisions, the learned counsel for the appellant/Insurance Company would contend that the claim petitioner cannot make a claim against the appellant / Insurance Company.

7. Per contra, Mrs.Ramya Rao, learned counsel for the first respondent would contend that when the Hon'ble Supreme Court has held that the borrower of the vehicle step into the shoes of the owner, the borrower also entitled for a sum of Rs.1,00,000/- as per the policy.

8. 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.

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9. With reference to Section 163-A of the Motor Vehicles Act, 1988, the Hon'ble Supreme Court has taken a view that if a borrower of the vehicle met with an accident while riding the vehicle, he cannot claim compensation under Section 163-A of the Act. The reason being in the event of granting compensation without adjudication of negligence, then the same would result in defeating the very object of the Act, under Sections 147 & 166 of the Motor Vehicles Act. When Section 147 categorically enumerates requirements of policies, limits and liabilities, the same cannot be whittled down, while dealing with the claim petitions under Section 163-A of the Act. All these provisions are to be read conjointly for the purpose of granting the benefit of Special provision enacted under Section 163-A of the Act, for payment of compensation on structured formula basis. When the Special provision is specifically provided for a Structured Formula basis, it cannot be read in isolation with reference to the nature of the contracted Policy and the requirement of Policy and limited liabilities clauses, which all are well enumerated under the provisions of the Act. Thus, this Court is of the considered opinion that a person, who borrowed a vehicle from the registered owner and while driving the same met with an accident sustained injuries or dead, then he is not entitled to claim any compensation under Section 163-A of the Act and even for claiming Personal Accident Policy (not a Statutory coverage in terms of Section 147 of the Act), he is bound to establish the three mandatory conditions and in the absence of compliance with the said three conditions, he is not entitled for compensation.

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 wold 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

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of the registered owner and file claim petition under Section 163-A of the Act.”

12. On perusal of Ex.R1 Insurance Policy copy, the Policy copy was not insured for driver of the vehicle and no additional premium was paid. As stated supra, the case of the injured P.W.1 is that while he was driving the two wheeler after he borrowed from the owner of the vehicle, a dog suddenly crossed the road and in order to avoid the accident he hit against the dog and resulted in the accident and hence, I find that the claim petitioner without involvement of any other vehicle has met with an accident due to his own fault and the claim petitioner being the tort-feasor cannot maintain any application under Motor Vehicles Act. Whether, the claim petition filed by the borrower of the vehicle from his owner is maintainable, is no longer res interga as held in the above Ramkhiladi and R.Damodharan case as cited above and hence on the factual circumstances of the case, as the P.W.1 and in view of the specific term under Ex.R1 as the vehicle was not insured and additional premium was not paid for the driver since it is a case of the two wheeler, the Insurance Company is not liable to pay the amount.

13. Accordingly, the appellant / Insurance Company is not liable to pay any compensation to the claim petitioner, the first respondent herein and the appellant / Insurance Company is exonerated from any liability. Consequently, the award passed by the Tribunal against the Insurance Company is set aside.

14. Accordingly, the judgment and decree, dated 05.11.2014, passed by the learned I Additional Sub Court, Cuddalore in M.C.O.P.No.618/2011 is quashed and consequently, C.M.A.No.370/2017 stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

15. The amount deposited by the appellant / Insurance Company, if any, in the credit of M.C.O.P.No.618 of 2011 on the file of the Motor Accident Claims Tribunal (I Additional Sub Court), Cuddalore, is permitted to be withdrawn by the appellant / Insurance Company, by filing an appropriate application.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1.The I Additional Sub Judge,
The Motor Accident Claims Tribunal
Cuddalore.

2.The Section Officer,
VR Section,
High Court, Madras 104.

+1cc to Mr.Elveera Ravindran, Advocate, S.R.No. 18733

C.M.A.No.370 of 2015

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