IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDERS RESERVED ON	ORDERS PRONOUNCED ON
26.03.2021	26.04.2021

CORAM:

THE HON'BLE MR.JUSTICE D.KRISHNAKUMAR

CIVIL MISCELLANEOUS APPEAL NO.2670 OF 2013
AND
M.P.NO.1 OF 2013

United India Insurance Co. Ltd.,
Cuddalore. ... 2nd Respondent/Appellant

.Vs.

1. Selvarani
2. Sivagami ... Petitioners/ Respondents 1 & 2

3. Prabakaran ... 1st Respondent/3rd Respondent

PRAYER:-

Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgement and decree dated 16.07.2012 made in M.C.O.P.No.17 of 2008 on the file of Subordinate Judge (Motor Accidents Claims Tribunal), Chidambaram.

For Appellant	:	Mr.S.Arunkumar
For Respondents 1 & 2	:	Mr.A.Murugan
For R3	:	Exparte

JUDGMENT

Brief facts of the claimant's case is as follows:

On 7.12.2006 at about 12.00 p.m., while the deceased Muruganandam was travelling as pillion rider in a motorcycle bearing registration No.T.N.31-K-9020 ridden by the third respondent herein in a rash and negligent manner at Theerthampalayam Mudakku and hit the vehicle on the wall, thereby caused accident, resulting in the deceased sustained fatal injuries on the head and died on the spot. A case has been registered by Parangipet police in Cr.No.298 of 2006. The legal heirs of the deceased have filed a claim petition before the tribunal claiming Rs.5,00,000/- from the appellant being the insurer of the vehicle.

2. The third respondent remained exparte before the tribunal. On the side of the claimants, P.W.1 and 2 were examined and Ex.P1 to P9 were marked. On the side of the respondent, R.W.1 was examined and Ex.R1 was marked.

3. Tribunal, based on the oral and documentary evidence adduced by both sides, came to the conclusion that at the time of accident the offending vehicle was insured with the appellant/Insurance Company and therefore, the appellant/ Insurance Company is liable to pay compensation to the claimants and awarded Rs.7,00,000/- as compensation to the claimants along with interest at the rate of 7.5% p.a. from the date of claim petition till realization. The total compensation awarded by the tribunal under various heads are as follows:

Heads	Compensation awarded by the tribunal in Rs.
Loss of Income	6,80,000/-
Transport charges	10,000/-
Funeral expenses	10,000/-
Total	7,00,000/-

4. Challenging the said award, Insurance Company has filed the present appeal against the liability fastened on the appellant/Insurance Company.

5. Heard the learned counsel appearing for the appellant/Insurance Company, learned counsel appearing for the respondents/claimants and perused the materials available on record.

6. According to the learned counsel appearing for the appellant, when the deceased travelled as pillion rider in a vehicle ridden by the owner of the vehicle and caused accident, the owner of the vehicle as well as pillion rider are not entitled to claim any compensation as the risk of the owner/insured was not covered in the Insurance Policy. Further, there is also a delay in registering the F.I.R. As per Sec.140 of M.V. Act, where death or permanent disablement of any person resulted from an accident arising out of the use of the motor vehicle or motor vehicles, the owner/s of the vehicles shall, jointly and severally, be liable to pay compensation in respect of such death or disablement in accordance with the provisions of this section. Further, the

tribunal without considering the provisions under Sec.166 of M.V. Act, evidence of R.W.1 and Ex.R-1 Insurance policy, has come to an erroneous conclusion that since the vehicle is covered under insurance policy, the appellant is liable to pay the compensation and awarded a sum of Rs.7,00,000/- directing the appellant to pay the award amount to the claimants. Further, the Tribunal failed to appreciate the contract of Insurance entered by the appellant and the deceased, wherein it is agreed to indemnify the claim laid against the deceased/owner/insured and not for his claim. Further, the deceased is responsible for the tort committed by the third respondent herein vicariously, while so claim either under Sec.166 or under Sec.163-A of M.V. Act is not maintainable against the insurer of the Motor vehicle. According to the counsel appearing for the appellant, considering the legal impediments under the provisions of Motor Vehicle Act and contract of insurance, pursuant to the suggestion of the Hon'ble Supreme Court to safeguard the risk of owner-cum-driver, personal accident cover was introduced by the Insurance regulating authority, in case of two-wheeler Rs.1,00,000/- and Rs.2,00,000/- in case of four- wheeler if the owner dies while riding /driving the vehicle. In the instant case, the insured/deceased has not paid additional premium, therefore, the claimants are not entitled for any compensation from the appellant. In support of his contention, the learned counsel for the appellant placed reliance on the decision of the Hon'ble Supreme Court reported in 2008 ACJ 1441 [OIC vs. RANJNIDEVI AND OTHERS] wherein it was specifically held, ''the liability under Section 163-A of the Act is on the owner of the vehicle as a person cannot be both, a claimant as also a recipient. The learned counsel for the appellant also placed reliance on the following decision of the Hon'ble Supreme Court.

(i) N.I.A. VS. PRABADEVI [2013 (1) TNMAC 781]

(ii) UIIC VS. REKHA AND OTHERS [2017 (2) TNMAC 674 (DB)

(iii) N.I.C. VS. RANI [2020 (1) TNMAC 593].

7. The learned counsel appearing for the respondents/ claimants submitted that the Tribunal has rightly came to the conclusion that the appellant/Insurance Company is liable to pay compensation of Rs.7,00,000/- as contract of insurance was subsisting on the date of accident. The appellant/Insurance Company wants to give a wrong interpretation to the liability clauses of the policy document. Insurance company says that there is no coverage for the death of the owner. The tribunal has correctly interpreted the 'Limits of Liability' clause and came to the conclusion that Insurance company is liable to pay compensation.

8. The learned counsel appearing for the respondents/ claimants has placed reliance on the Limits of Liability in

the Schedule of the Policy wherein it is stated as under:

> Limits of Liability :
> Under Section II-I (I) Death of or bodily injury in respect of any one accident: As per Motor Vehicles Act, 1988
> Under Section II-I(II) Damage to third party property in respect of any one claim or series of claims arising out of one event Rs.1,00,000/-

In view of the aforesaid clause, the claimants are entitled for compensation as against the appellant/Insurance Company.

9. To refute the submission of the counsel appearing for the respondents/claimants, Mr.Arun Kumar, learned counsel appearing for the appellant placed reliance on the following provisions of the Motor Vehicles Act as well as various decisions of the Hon'ble Supreme Court:

I. Section 140 of the Motor Vehicles Act, 1988

> 140. Liability to pay compensation in certain cases on the principle of no fault.—
>
> (1) Where death or permanent disablement of any person has resulted from an accident arising out of the use of a motor vehicle or motor vehicles, the owner of the vehicle shall, or, as the case may be, the owners of the vehicles shall, jointly and severally, be liable to pay compensation in respect of such death or disablement in accordance with the provisions of this section.
>
> (2) The amount of compensation which shall be payable under sub-section (1) in respect of the death of any person shall be a fixed sum of 1[fifty thousand rupees] and the amount of compensation payable under that sub-section in respect of the permanent disablement of any person shall be a fixed sum of 2[twenty-five thousand rupees].
>
> (3) In any claim for compensation under sub-section (1), the claimant shall not be required to plead and establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act, neglect or default of the owner or owners of the

vehicle or vehicles concerned or of any other person.

(4) A claim for compensation under sub-section (1) shall not be defeated by reason of any wrongful act, neglect or default of the person in respect of whose death or permanent disablement the claim has been made nor shall the quantum of compensation recoverable in respect of such death or permanent disablement be reduced on the basis of the share of such person in the responsibility for such death or permanent disablement.

(5) Notwithstanding anything contained in sub-section (2) regarding death or bodily injury to any person, for which the owner of the vehicle is liable to give compensation for relief, he is also liable to pay compensation under any other law for the time being in force:

Provided that the amount of such compensation to be given under any other law shall be reduced from the amount of compensation payable under this section or under section 163A.''

II. Section 147 of the Motor Vehicles Act, 1988

''147 Requirements of policies and limits of liability. — (1) In order to comply with the requirements of this Chapter, a policy of insurance must be a policy which— (a) is issued by a person who is an authorised insurer; and

(b) insures the person or classes of persons specified in the policy to the extent specified in sub-section (2)—

(i) against any liability which may be incurred by him in respect of the death of or bodily[27][injury to any person, including owner of the goods or his authorised 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 in a public place;

(ii) against the death of or bodily injury to any passenger of a public service vehicle caused by or arising out of the use of the vehicle in a public place:

Provided that a policy shall not be required—

(i) to cover liability in respect of the death, arising out of and in the course of his employment, of the employee of a person insured by the policy or in respect of bodily injury sustained by such an employee arising out of and in the course of his employment other than a liability arising under the Workmen's Compensation Act, 1923 (8 of 1923) in respect of the death of, or bodily injury to, any such employee—

(a) engaged in driving the vehicle, or

(b) if it is a public service vehicle engaged as conductor of the vehicle or in examining tickets on the vehicle, or

(c) if it is a goods carriage, being carried in the vehicle, or

(ii) to cover any contractual liability.
Explanation. —For the removal of doubts, it is hereby declared that the death of or bodily injury to any person or damage to any property of a third party shall be deemed to have been caused by or to have arisen out of, the use of a vehicle in a public place notwithstanding that the person who is dead or injured or the property which is damaged was not in a public place at the time of the accident, if the act or omission which led to the accident occurred in a public place.

(2) Subject to the proviso to sub-section (1), a policy of insurance referred to in sub-section (1), shall cover any liability incurred in respect of any accident, up to the following limits, namely:—

(a) save as provided in clause (b), the amount of liability incurred;

(b)in respect of damage to any property of a third party, a limit of rupees six thousand:
Provided that any policy of insurance issued with any limited liability and in force, immediately before the commencement of this Act, shall continue to be effective for a period of four months after such commencement or till the date of expiry of such policy whichever is earlier.

(3) A policy shall be of no effect for the purposes of this Chapter unless and until there

is issued by the insurer in favour of the person by whom the policy is effected a certificate of insurance in the prescribed form and containing the prescribed particulars of any condition subject to which the policy is issued and of any other prescribed matters; and different forms, particulars and matters may be prescribed in different cases.

(4) Where a cover note issued by the insurer under the provisions of this Chapter or the rules made thereunder is not followed by a policy of insurance within the prescribed time, the insurer shall, within seven days of the expiry of the period of the validity of the cover note, notify the fact to the registering authority in whose records the vehicle to which the cover note relates has been registered or to such other authority as the State Government may prescribe.

(5) Notwithstanding anything contained in any law for the time being in force, an insurer issuing a policy of insurance under this section shall be liable to indemnify the person or classes of persons specified in the policy in respect of any liability which the policy purports to cover in the case of that person or those classes of persons.''

III. ORIENTAL INSURANCE CO. LTD. VS. RAJNI DEVI & ORS [2008 ACJ 1441]

IV. ROYAL SUNDARAM ALLIANCE INSURANCE CO. LTD., COIMBATORE [(2009) 2 MLJ 963]

V. NEW INDIA ASSURANCE CO. LTD. VS. C.M.JAYA AND ORS. [MANU/SC/0031/2002]

VI. THE DIVISIONAL MANAGER, M/S.UNITED INDIA INSURANCE CO. LTD., KURINJIPADI VS. R.REKHA & OTHERS [CDJ 2017 MHC 6539]

VII. M/S.NATIONAL INSURANCE CO. LTD., PUDUCHERRY VS. RANI & OTHERS [CDJ 2020 MHC 1056

10. The Hon'ble Supreme Court in Rajni Devi case (supra), has held as follows:

"10. The liability under Section 163-A of the Act is on the owner of the vehicle as a person cannot be both, a claimant as also a recipient. The heirs of Janakraj could not have maintained a claim in terms of Section 163-A of the Act. For the said purpose only the terms of the contract of insurance could be taken recourse to.”

11. In the case of ROYAL SUNDARAM ALLIANCE INSURANCE CO. case (supra), the Hon'ble Supreme Court has held as follows:

> “33. The policy holder should know as to whose risk is being covered. It should be brought to his knowledge that even his family members would be gratuitous passengers travelling in his car and we also hope that in addition to English and Hindi, the insurance companies, both public sector as well as private sector undertakings, would consider publishing the instructions and guidelines in the language of the State. The law governing the insurance policy ultimately is a law of contract and so both parties should understand exactly what are the terms of the contract and for exactly what extent and what type of coverage the policy holder is paying premium.
>
> 34. While deciding the claim petition, the Motor Accidents Claims Tribunal should examine the terms of the Policy produced by the insurer, and in the event of denial of liability, a finding should be rendered with regard to the nature of the Policy as to whether it was an 'Act Policy' or a 'Package Policy.”

12. In C.M.JAYA AND ORS. Case (supra), the Larger Bench of the Hon'ble Supreme Court has held as under:

> “12. In these appeals presently before us, the judgment and order of Delhi High Court are under challenge. The deceased was riding the pillion seat of a two-wheeler when it met with a truck insured by the appellant. On the claimants approaching the Motor Accident Claims Tribunal, it awarded a sum of Rs.1,03,360/- as compensation and held that the liability of the appellant was limited to Rs.50,000/- and the balance amount was recoverable from the driver and owner of the truck jointly and severally. The truck owner (the respondent no. 4) preferred an appeal to the High Court. The High Court held that the liability of the appellant was unlimited as the vehicle was comprehensively insured. The High Court also allowed cross-objections preferred by the claimants/ Respondents Nos. 1 to 3 solely against the appellant under Order XLI Rule 22 CPC for the full pecuniary liability to be placed upon the insurer while enhancing the amount of

compensation from Rs.1,03,360/- to Rs.3,60,000/- with interest @ 15% per annum from the date of application. Hence, these two appeals are brought by the appellant, aggrieved by the judgment and order of the High Court. The submissions were made before us by the learned counsel for the parties in support of the respective contentions citing the decisions aforementioned as to the extent of liability of the appellant to pay the amount of compensation to Respondents 1 to 3. It is not in dispute from the admitted copy of the insurance policy produced before the Court that the liability of the appellant is limited to Rs.50,000/- in regard to the claim in question. The relevant clause in the policy relating to limits of liability reads:-

Limits of Liability: Limit of the amount of the Company's liability under Section II-1(i) in respect of any one accident. - Rs. 50,000/-Limit of the amount of the Company's liability under Section II-1(ii) in respect of any claim or series of claims arising out of one event - Rs. 50,000/-.

It is also not the case that any additional or higher premium was paid to cover unlimited or higher liability than the statutory liability fixed as found in the term of the policy extracted above. In the light of the law stated above, it necessarily follows that the liability of the appellant is limited to Rs.50,000/-, as was rightly held by the Tribunal. The High Court committed an error in taking the contrary view that the liability of the appellant was unlimited merely on the ground that the insured had taken a comprehensive policy. In Shanti Bai's case, this Court has clearly expressed the opinion that a comprehensive policy issued on the basis of the estimated value of the vehicle does not automatically result in covering the liability with regard to third party risk for an amount higher than the statutory limit in the absence of specific agreement and payment of separate premium to cover third party risk for an amount higher than the statutory limit. This position is accepted in Amrit Lal Sood's case as well though no reference is made to this case. As already stated above, in Amrit Lal Sood's case, the Court found an express term in the policy for covering wider risk and to meet the higher liability unlike in the case of Shanti Bai. Therefore, the High Court was not right in holding that the liability of the appellant insurance-company was unlimited merely on the ground that the vehicle in question, i.e., the truck, was covered by a comprehensive insurance policy.”

13. In the circumstances, we hold that the liability of the appellant insurance-company is limited to Rs. 50,000/-, as held by the Tribunal. In the view we have taken, it is unnecessary to go into the question relating to either maintainability of cross-objections before the High Court against the appellant alone or as to the enhancement of compensation when the owner and driver have not filed appeal against the impugned judgment.”

13. In R.REKHA case (supra), the Hon'ble Supreme Court has held as under:

“26. As far as the present case is concerned, the deceased was travelling as a pillion rider in the two wheeler owned by him. Admittedly, the deceased himself was the owner of the two wheeler. At the time of accident, the driver of the two wheeler suddenly applied brake and hit a cyclist which led to the accident. No other motor vehicle has been involved in this case. Thus, the accident did not involve any other motor vehicle other than the one in which the deceased was travelling as a pillion rider. Therefore, the liability of the insurance company is only to the extent of indemnification of the insured against the third person or in respect of damages of property. While so, the insurance company cannot be fastened with any liability under the provisions of the Motor Vehicles Act for the death of the deceased who himself was the owner of the vehicle and when no other motor vehicle was involved in this case. Therefore, the question of the insurer being liable to indemnify the deceased/owner of the vehicle does not arise. Since the deceased himself was the owner of the two wheeler and not a third party, the claim petition filed by the claimants will not come within the purview of Section 146 or 147 of The Motor Vehicles Act for the purpose of payment of compensation. Therefore, we hold that the impugned Judgment and Decree of the Tribunal cannot be sustained. The Appeal filed by the Insurance Company deserves only to be allowed. At the same time, it is needless to mention that the claimants are entitled for payment of Rs.1,00,000/- only towards Personal Accident Cover proportionate to the premium paid by the deceased.

27. Before parting with, we are pained to observe that as per the Indian Motor Tariff, the compensation payable to the legal heirs in case of death or bodily injury suffered by the owner of the vehicle is restricted to Rs.1,00,000/- only in case of two wheeler and Rs.2,00,000/- in case of four wheeler, by virtue of the Compulsory Personal Accident Cover mooted by the statutory authorities in charge of regulating the Motor Insurance Policies. As per the Compulsory Personal Accident Cover, in case of death or bodily injury sustained by the owner of the vehicle, he or she is eligible for compensation of Rs.1,00,000/- alone.. The amount of compensation payable by the Insurer is confined and limited to the extent of Rs.1,00,000/- as per the India Motor Tariff, which came into effect from 01.08.2002. It is noteworthy to mention that prior to 01.08.2002, even the compensation of Rs.1,00,000/- for two wheeler owner and Rs.2,00,000/- for owner of four wheeler was not envisaged and the unfortunate victim of motor accidents, whose death is caused in the motor accident or who sustain bodily injury, will be left without any amount of compensation. It is needless to mention that nobody will suffer bodily injury or die voluntarily or on their own, particularly in a road accident that are caused only due to negligence and carelessness. A small omission or diversion while driving the vehicle by the drivers of the motor vehicle has very many consequences not only in the physical condition of the injured, but also leaves the legal heirs of the deceased to grope in the dark with clueless future. Therefore such accidents caused, unmindful of the consequences, should not be made to deprive the owner of the vehicle or his or her family to suffer and such sufferings should be mitigated by means of adopting a fair policy to compensate those victims of road accidents."

14. In the case of RANI & OTHERS (supra), the Hon'ble Supreme Court has held as under:

"14. Perusal of the judgment, 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. In the event of entertaining such claim petition, undoubtedly, the other provisions namely, Section 147 and other related provisions would get defeated and the object sought to be reached through Special Provision under Section 163-A of the Act, would also be defeated. Thus the fact remains that in all such cases, where a vehicle was borrowed from the registered owner by any person and such vehicle met with an accident and the rider of the vehicle sustained injury or it resulted in death, then no claim petition is entertained under Section 163-A of the Act and even in cases of claim of Personal Accident Policy (not a statutory coverage in terms of Section 147 of the Act), then also the mandatory conditions under the Personal Accident Policy are to be established by the claimant. This being the principles to be followed, this Court is of the considered opinion that in the present case, the claim petition is unsustainable and not entertainable and liable to be rejected.

15. Accordingly, the judgment and decree dated 30.03.2012 passed by the learned Fast Track Judge, Fast Track Court-cum-Motor Accidents Claims Tribunal, Kallakurichi in MCOP No.282 of 2010 is set aside and consequently, C.M.A.No. 1848 of 2017 stands allowed. However, there shall be no order as to costs. The connected miscellaneous petition is closed."

15. In R.REKHA case (supra), the Hon'ble Supreme Court has clearly held that the insurance company cannot be fastened with any liability under the provisions of the Motor Vehicles Act for the death of the deceased who himself was the owner of the vehicle and when no other motor vehicle was involved in this case. Therefore, the question of the insurer being liable to indemnify the deceased/owner of the vehicle does not arise. In Rajni Devi case (supra), the Hon'ble Supreme Court has held that the liability under Section 163-A of the Act is on the owner of the vehicle as a person cannot be both, a claimant as also a recipient. Further, in the dictum laid down by the Hon'ble Supreme Court shows that unless premium is paid under Personal Accident Coverage, the claimant is not entitled to claim compensation against the Insurance Company. In the case in hand, the owner of the vehicle has not paid additional premium under personal accident risk coverage. The realm of the contract will bind on the parties as per the terms and conditions of the policy. Thus, the claimant is not entitled to get compensation as against the Insurance Company.

16. In view of the aforesaid discussion and the decisions cited supra, the appellant/Insurance Company is absolved from liability to pay compensation to the respondents/claimants. The appellant/Insurance Company is permitted to withdraw the amount if any, deposited before the tribunal.

17. Consequently, the Civil Miscellaneous Appeal is allowed. No costs. Connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

vaan

To

The Subordinate Judge
(Motor Accidents Claims Tribunal),
Chidambaram.

Copy To:

The Section Officer,
V.R.Section,
Madras High Court,
Chennai - 104.

+1cc to Mr.A.Murugan, Advocate, S.R.No.25933
+1cc to Mr.S.Arunkumar, Advocate, S.R.No.25717

CIVIL MISCELLANEOUS APPEAL NO.2670 OF 2013
AND M.P.NO.1 OF 2013

KV(CO)
PBS/08/10/2021