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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.3.2021

CORAM:

THE HON'BLE MR.JUSTICE D.KRISHNAKUMAR

CIVIL MISCELLANEOUS APPEAL NO.3448 OF 2014

AND

M.P.NO.1 OF 2014

The National Insurance Company Ltd.,
No.165, Nethaji Road,
Manjakuppam,
Cuddalore.

... Appellant/2nd Respondent

..Vs..

1. J.Gnanavel

... Respondent-1/Petitioner

2. R.Subramanian

... Respondent-2/1st Respondent

Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and decree dated 11.02.2014 made in M.C.O.P.No.453 of 2012 on the file of Chief Judicial Magistrate (Motor Accidents Claims Tribunal), Cuddalore.

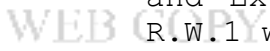
For Appellant : Mrs.N.B.Surekha

For Respondent No.1 : Mrs.Ramya Rao

JUDGMENT

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

On 22.3.2011 at about 8.00 p.m., while the petitioner was riding the first respondent's motorcycle bearing registration No.PY-01-AF-4083 at extreme left side of the Virudhachalam - Cuddalore main road, near T.Chathiram bridge, a man suddenly crossed the road. The petitioner tried to avoid the accident but due to the sudden cross of the man, he could not avoid the accident. The motorcycle hit against the man, thereby caused accident, resulting in the petitioner sustained grievous injuries and multiple fractures all over the body. The petitioner has filed a claim petition before the Tribunal, claiming Rs.5,00,000/- as compensation from the appellant and



2 On the side of the petitioner, P.W.1 & 2 were examined and Ex.P1 to P-9 were marked. On the side of the respondent, R.W.1 was examined and Ex.R1 to R3 were marked.

Heads	Amount in Rs.
Loss of future earnings (3300 x 12 x 20%/100 x 12 x 18)	1,42,560/-
Pain and suffering	5,000/-
Loss of Income during treatment period	9,900/-
Extra Nourishment &Transportation	5,000/-
Total :	1,62,460/-

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

7 According to the learned counsel appearing for the
appellant/Insurance Company, Ex.R3 charge sheet shows that the
claimant was accused for causing accident. There is no other



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independent evidence before the tribunal to prove the cause of accident. The claimant who borrowed the vehicle, driven himself and met with an accident. In support of his contention, the learned counsel appearing for the appellant/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.

8. The learned counsel appearing for the respondent/claimant would submit that the tribunal based on the oral and documentary evidence, has held that there is no evidence to show that the claimant who ride the motorcycle in a rash and negligent manner and caused accident and the tribunal has clearly held that the claimant who sustained injuries in the accident held as stated supra. The petitioner marked personal accident policy as Ex.P3. Therefore, there is no warrant to interfere with the award passed by the tribunal.

9. On perusal of the materials available on record, on facts, the respondent/claimant has not disputed the fact that the claimant was a borrower of the vehicle. The claimant while driving the borrowed vehicle, steps into shoes of owner of the vehicle. When the claimant stepped into the shoes of owner of the borrowed vehicle, claim against owner and Insurer of borrowed vehicle is not maintainable. In RAMKHILADI case (supra), the Hon'ble Supreme Court held as under:

"5.9 Now, so far as the submission made on behalf of the claimants that in a claim under Section 163A of the Act mere use of the vehicle is enough and despite the compensation claimed by the heirs of the owner of the motorcycle which was involved in the accident resulting in his death, the claim under Section 163A of the Act would be maintainable is concerned, in view of the decision of this Court in Rajni Devi (supra), the aforesaid cannot be accepted. In Rajni Devi (supra), it has been specifically observed and held that the provisions of Section 163A of the Act cannot be said to have any application with regard to an accident wherein the owner of the motor vehicle himself is involved. After considering the decisions of this



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Court in the cases of Oriental Insurance Co. Ltd. V. Jhuma Saha (2007) 9 SCC 263; Dhanraj (supra); National Insurance Co. Ltd. V. Laxmi Narain Dhut (2007) 3 SCC 700 and Premkumari v. Prahlad Dev (2008) 3 SCC 193, it is ultimately concluded by this Court that the liability under Section 163A of the Act is on the owner of the vehicle as a person cannot be both, a claimant as also a recipient and, therefore, the heirs of the owner could not have maintained the claim in terms of Section 163A of the Act. It is further observed that, for the said purpose, only the terms of the contract of insurance could be taken recourse to. In the recent decision of this Court in the case of Ashalata Bhowmik (supra), it is specifically held by this Court that the parties shall be governed by the terms and conditions of the contract of insurance. Therefore, as per the contract of insurance, the insurance company shall be liable to pay the compensation to a third party and not to the owner, except to the extent of Rs.1 lakh as observed hereinabove.''

10. Following the judgment of the Hon'ble Supreme Court cited supra, this Court in NATIONAL INSURANCE CO. LTD., PUDHUCHERRY VS. RANI AND 5 OTHERS [C.M.A.No.1848 of 2017, dated 12.3.2020] held as under:

''13. The Hon'ble Supreme Court in the judgment, cited supra, in unequivocal terms held that in a claim under Section 163-A of the Act, there is no need for the claimants to plead or establish the negligence and/or that the death in respect of which the claim petition is sought to be established was due to wrongful act, neglect or default of the owner of the vehicle concerned. It is also true that the claim petition under Section 163-A of the Act is based on the Principle of 'No Fault Liability'. However, at the same time, the deceased has to be a third party and cannot maintain a claim under Section 163-A of the Act, against the owner/Insurer of the vehicle, which is borrowed by him as he will be in the shoes of the owner and he cannot maintain a



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claim under Section 163-A of the Act, against the owner and Insurer of the vehicle. 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. The aforesaid decisions are squarely applies to the facts of the case in hand. Therefore, the appellant/Insurance company is not liable to pay any compensation to the claimant/respondent.

12. In view of the aforesaid discussion and the decisions cited supra, the appellant/Insurance company is absolved from liability to pay compensation to the claimant. The appellant/Insurance Company is permitted to withdraw the amount already deposited before the tribunal. The award passed by the tribunal against the appellant/Insurance company is set aside.

13. In fine, the Civil Miscellaneous Appeal is allowed. No costs. Connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS VIII)

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Sub Assistant Registrar

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To

1. The Chief Judicial Magistrate
(Motor Accidents Claims Tribunal),
Cuddalore.
2. The National Insurance Company Ltd.,
No.165, Nethaji Road, Manjakuppam,
Cuddalore.
3. The Section Officer,
V.R.Section,
Madras High Court,
Chennai-104.

+1cc to Mrs.N.B.Surekha, Advocate, S.R.No.19628

C.M.A.No.3448 of 2014
and M.P.No.1 of 2014

RGN(CO)
CS/05/10/2021