IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.03.2021

CORAM:

THE HON'BLE Mr.JUSTICE D.KRISHNAKUMAR

C.M.A No.577 of 2014
and M.P.No.1 of 2014

M/s.Iffco Tokio General Insurance Company Ltd.,
No.43/3, 100 Feet Road
Mudaliarpet
Pondicherry-605 004 ... Appellant/2nd Respondent

..Vs..

1. M.Thangavel
2. P.Sekar ... Respondents/Petitioners/1st Respondent

Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and decree dated 24.06.2013 made in M.C.O.P.No.219 of 2010 on the file of the Special Subordinate Judge, (Motor Accidents Claims Tribunal), Cuddalore.

For Appellant : Mr.E.Rajadurai

For Respondents : Mr.M.Sivakumar for R1
Notice unserved to R2

JUDGMENT

The instant appeal has been filed by the insurance company questioning the liability.

2. The first respondent/claimant has filed a claim petition before the Tribunal seeking compensation of Rs.5,00,000/- for the injuries sustained by him, in a road accident that took place on 27.07.2009.

3. The brief case of the claimants is as follows: On 27.07.2009, while the petitioner was driving the first respondent's motorcycle bearing Registration No.PY-02-C-9775 from south to north direction at the extreme left side of the Cuddalore-Chidambaram Road, at Chetty Kulam, near Alapakkam Railadi, in the opposite direction, a vehicle came in a rash and negligent manner without making any horn and to avoid the accident, the petitioner turned the vehicle and fell down at the

side of the road and due to which, he sustained grievous injuries and multiple fractures all over his body and head. According to the claimant, the accident was happened due to the negligence on the part of the driver of the first respondent vehicle and since the first respondent/ owner of the vehicle insured with the second respondent/ insurance company, both of them are liable to pay compensation.

4. The claim petition was resisted by the appellant/insurance company by filing counter affidavit.

5. Before Tribunal, the claimant and the doctor were examined as PW1 and PW2 respectively and Ex.P1 to Ex.P15 were marked. On the side of the second respondent, no oral and documentary evidence was adduced. The first respondent remained exparte.

6. After analysing the evidence on record, the Tribunal has awarded a sum of Rs.1,53,300/- to the claimant. The compensation awarded under various heads are extracted hereunder.

Sl No	Heads	Amount in Rs.
1	Permanent Disability	75,600
2	Pain and Suffering	15,000
3	Loss of Income	6,00 0
4	Transportation	10,000
5	Extra Nourishment	10,000
6	Medical Expenses	36,700
	Total	1,53,300

Aggrieved over the compensation awarded by the Tribunal, the appellant insurance company has filed the present appeal.

7. Heard the learned counsel for the appellant/insurance company and the learned counsel appearing for the first respondent/claimant and perused the materials available on record.

8. Challenging the award passed by the Tribunal fastening liability against the appellant /Insurance Company, the present appeal has been filed on the ground that due to negligence on the part of the claimant, the accident occurred

and therefore, claimant being a tort-feaser cannot claim compensation from the appellant and in the F.I.R., the claimant was shown as accused. Further, there is no independent witness examined before the tribunal.

9. The short point involved in the present appeal is that whether the Insurance Company is liable to pay compensation to the claimant or not.

10. According to the learned counsel appearing for the appellant/ Insurance Company, Ex.P1 FIR shows that the claimant was accused for causing accident. There is no other 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.

11. The learned counsel appearing for the first 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 has sustained injuries in the accident. The petitioner marked the insurance policy of the offending/insured vehicle as Ex.P4. Therefore, there is no warrant to interfere with the award passed by the tribunal.

12. On perusal of the materials available on record, on facts, the first 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 the 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 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.''

13. 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 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.''

14. 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 first respondent/claimant.

15. 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 by filing an appropriate application. The award passed by the tribunal against the appellant/Insurance company is set aside.

16. In fine, the Civil Miscellaneous Appeal is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Special Subordinate Judge,
(Motor Accidents Claims Tribunal),
Cuddalore.

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

+1cc to Mr.D.S.Thirumavalavan, Advocate Sr.21245

C.M.A.No.577 of 2014
and M.P.No.1 of 2014

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srg 29/10/2021