IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.12.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.991 of 2014
and M.P.No.1 of 2014

The Branch Office,
The Oriental Insurance Co. Ltd.,
Kallakurichi. ...Appellant/2nd Respondent

Vs.

1.P.Selvakumaravel ..1st Respondent/Petitioner
2.R.Ravichandran ..2nd Respondent/1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 15.07.2013 made in M.C.O.P.No.153 of 2011 on the file of the III Additional District & Sessions Court, (Motor Accident Claims Tribunal), Kallakurichi, Villupuram District.

For Appellant : Mr.M.J.Vijayaraghavan
For Respondents : Mr.D.Vasanth (For R1)
for M/s.N.Suresh
No appearance (For R2)

J U D G M E N T

(The matter is heard through Video Conferencing/Hybrid mode)

This appeal has been filed by the appellant-Insurance Company against the liability fastened on them in the award dated 15.07.2013 made in M.C.O.P.No.153 of 2011 on the file of the III Additional District & Sessions Court, (Motor Accident Claims Tribunal), Kallakurichi, Villupuram District.

2.The appellant is the 2nd respondent in M.C.O.P. No.153 of 2011 on the file of the III Additional District & Sessions Court, (Motor Accident Claims Tribunal), Kallakurichi, Villupuram District. The 1st respondent/claimant filed the said claim petition, claiming a sum of Rs.21,08,000/- as compensation for the injuries sustained by him in the accident that took place on 02.07.2008.

3.According to the 1st respondent, on the date of accident, when he was riding the Motorcycle bearing Registration No.TN-31-M-9844 from Erumbur to Neyveli, near Veenangeni Bus Stop at Cuddalore to Vridhachalam Main Road, one unidentified Tata Sumo Car dashed against the Motorcycle and caused the accident. In the accident, the 1st respondent suffered grievous and multiple injuries all over the body. The accident has occurred only due to rash and negligent driving by driver of the unidentified Tata Sumo Car. Hence, the 1st respondent filed the claim petition claiming compensation against the 2nd respondent as owner of the Motorcycle which he was riding and appellant, as insurer of the said vehicle.

4.The 2nd respondent, owner of the Motorcycle, remained exparte before the Tribunal.

5.The appellant-Insurance Company, filed counter statement and denied all the averments made by the 1st respondent in the claim petition. According to the appellant, the Motorcycle owned by the 2nd respondent was not insured with them, as the 1st respondent neither mentioned the Policy number in the claim petition nor produced the policy copy along with the claim petition. The claim petition is not maintainable as the owner, driver and insurer of the Tata Sumo Car are not impleaded as a party. FIR has been registered against the driver of the unidentified Tata Sumo Car on 09.08.2008, belatedly. As the 1st respondent is a gratuitous passenger, he cannot claim compensation from the appellant, for an accident that occurred due to his own negligence. The 1st respondent has to prove his age, avocation and income to claim compensation. In any event, the total compensation claimed is excessive and prayed for dismissal of the claim petition.

6.Before the Tribunal, the 1st respondent examined himself as P.W.1, examined Dr.Visvanathan as P.W.2 and marked 17 documents as Exs.P1 to P17. The appellant examined one Sampath, Legal Adviser of the appellant-Transport Corporation as R.W.1 and marked Policy copy as Ex.R1.

7.The Tribunal considering the pleadings, oral and documentary evidence, held that the 1st respondent is entitled to compensation for the injuries sustained in the accident and directed the appellant, as insurer of the said vehicle, to pay a sum of Rs.5,80,000/- as compensation to the 1st respondent.

8.Challenging the liability fastened on them by the award of the Tribunal dated 15.07.2013 made in M.C.O.P.No.153 of 2011, the appellant - Insurance Company has come out with the present appeal.

9.The learned counsel appearing for the appellant contended that the Tribunal failed to see that the 1st respondent is the tort-feasor and he is not entitled to get compensation from the appellant-Insurance Company. The Tribunal erred in fastening the liability on the appellant-Insurance Company, as he is not covered under the policy issued by the appellant. The Tribunal, considering the oral and documentary evidence let in by the appellant, ought to have exonerated the appellant-Insurance Company from the liability. The Tribunal failed to consider the decisions of the Hon'ble Apex Court reported in (2009) 13 SCC 710 [Ningamma and another Vs. United India Insurance Company Limited] and 2021 (2) TN MAC 574 [New India Assurance Co. Ltd., Vs. Gurumoorthy and others] and prayed for setting aside the award of the Tribunal.

10.Per contra, the learned counsel appearing for the 1st respondent contended that while the 1st respondent was riding the Motorcycle, one unidentified Tata Sumo Car, driven in a rash and negligent manner, dashed against the Motorcycle in which the 1st respondent was riding. The Tata Sumo Car did not stop and Police could not trace the vehicle. Unfortunately, the said Tata Sumo Car escaped in the hit and run case accident. The 1st respondent has filed the claim petition under Section 163A of the Motor Vehicles Act [hereinafter, referred to as, 'the Act']. When the claim petition is filed under Section 163 of the Act, the claimant need not plead and prove the negligence on the part of the driver or owner of the vehicle. The claimant has to prove that the accident occurred arising out of use of Motorcycle and owner and insurer are liable for death or permanent disability. As per the provisions of Section 163A, the user of the vehicle steps into the shoes of the owner and hence, the owner and Insurance Company are liable to pay the compensation to the claimants. The compensation claimed under Section 163A of the Act is for own damage from the Insurance Company. The Hon'ble Apex Court, in the judgment reported in (2009) 13 SCC 710 [Ningamma and another Vs. United India Insurance Company Limited], held that when the Motorcycle involved in the accident hit the bullock cart, the claimant was entitled to just compensation not only under Section 163A of the Act, but also under Section 166 of the Act. The learned counsel appearing for the 1st respondent relied on paragraph nos.36 and 37 of the judgment reported in (2009) 13 SCC 710, which reads as follows:

> "36.The High Court was required to consider the aforesaid issues even if it found that the provision of Section 163-A of MVA was not applicable to the facts and circumstances of the present case. Since all the aforesaid issues are purely questions of fact, we do not propose to deal with these issues and we send the matter back to the High Court for dealing with the said issues and to render its decision in accordance with law.
>
> 37.The High Court will also consider the question of quantum of compensation, if any, to which the claimants might be entitled to, having regard to the earning capacity of the deceased and "Just Compensation", if any. Since the claim is a very old claim, we request the High Court to consider the matter as expeditiously as possible."

The learned counsel appearing for the 1st respondent further submitted that the said judgment was affirmed by the Hon'ble Apex Court in the judgment reported in 2020 (2) SCC 550 [Ramkhiladi and another Vs. United India Insurance Company Limited and another]. In view of the judgment of the Hon'ble Apex Court, the 1st respondent has filed the claim petition under Section 163 A of the Act. The 1st respondent is entitled to just compensation. The Tribunal considering the nature of injuries and avocation, has awarded compensation. There is no error in the said award of the Tribunal and prayed for dismissal of the appeal.

11.Though notice has been served on the 2nd respondent and his name is printed in the cause list, there is no representation for him either in person or through counsel.

12.Heard the learned counsel appearing for the appellant-Insurance Company as well as the 1st respondent and perused the entire materials available on record.

13.From the materials on record, it is seen that it is the admitted case of the 1st respondent that while he was riding the Motorcycle, one unidentified Tata Sumo Car dashed against the Motorcycle in which he was riding and caused the accident. In the said accident, the 1st respondent sustained grievous injuries all over the body, fracture on both bones of right leg and middle finger of right hand and amputation of distal pulp middle finger of right hand. It is the specific case of the 1st respondent that accident occurred due to the negligence of driver of the unidentified Tata Sumo Car and accident is a hit and run case. The 1st respondent as well as the Police could not identify the Tata Sumo Car, which caused the accident. In such circumstances, the 1st respondent filed claim petition against the 2nd respondent, as owner of the Motorcycle in which he was riding and appellant, as insurer of the Motorcycle. The 1st respondent has filed the claim petition under Section 163A of the Act. According to the 1st respondent, the compensation claimed by him is for own damages from the Insurance Company. Section 163 A of the Act is extracted hereunder for ready reference:

> "163-A. Special provisions as to payment of compensation on structured- formula basis. -
>
> (1) Notwithstanding anything contained in this Act or in any other law for the time being in force or instrument having the force of law, the owner of the motor vehicle or the authorised insurer shall be liable to pay in the case of death or permanent disablement due to accident arising out of the use of motor vehicle, compensation, as indicated in the Second Schedule, to the legal heirs or the victim, as the case may be.
>
> Explanation. – For the purposes of this sub-section, "permanent disability" shall have the same meaning and extent as in the Workmen's Compensation Act, 1923.
>
> (2) In any claim for compensation under sub-section (1), the claimant shall not be required to plead or establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act or neglect or default of the owner of the vehicle or vehicles concerned or of any other person.
>
> (3) The Central Government may, keeping in view the cost of living by notification in the Official Gazette, from time to time amend the Second Schedule."

As per the above said Section, the owner of the Motorcycle or authorized insurer is liable to pay compensation in case of permanent disability due to "accident arising out of use of Motorcycle as per Second Schedule". As per Sub Section (2) of Section 163A of the Act, the claimant is not required to plead and establish that the death or permanent disability in respect of the claim made was due to any wrongful act or neglect or default of the owner of the vehicle or vehicles concerned or of any other person. The Hon'ble Apex Court, in the judgment referred to by the learned counsel appearing for the appellant as well as the respondents, held that the rider of Two Wheeler, who has borrowed the Two Wheeler from the owner of the vehicle, steps into shoes of the owner of the vehicle. It is also held that owner of the vehicle is not entitled to claim compensation against his own insurer. The reason for the same is that the Insurance Company is liable to pay compensation on behalf of the owner of the vehicle and liability of the Insurance Company arises only when the insured owner of the vehicle is liable to pay compensation. The issue whether rider of the Two Wheeler can claim compensation from owner of the vehicle in which he was riding at the time of accident and from the Insurance Company of the said vehicle is no longer res-integra. The Hon'ble Apex Court has held that rider of the Two Wheeler cannot claim compensation against the owner of the vehicle and also the Insurance Company, as a tort-feasor is not entitled to claim such compensation. I had an occasion to consider the very same issue in the judgment reported in 2021 (2) TN MAC 574 (referred to above). After considering the following judgments of the Hon'ble Apex Court and this Court reported in 2009 (2) TNMAC 169 (SC) [Ningamma & another v. United India Insurance Co. Ltd.], (2008) 2 TNMAC 336 SC [Oriental Insurance Company vs. Rajni Devi and others], 2017 (2) TNMAC 753 (SC) [United India Insurance Co. Ltd., Vs. Sunil Kumar and another], 2018 (2) TNMAC 149 (SC) [Shivaji and another Vs. United India Insurance Co. Ltd.], 2020 (1) TN MAC 1 (SC) [Ramkhiladi and another Vs. United India Insurance Co. Ltd., and another], 2004 (1) TN MAC (SC) 193 [Deepal Girishbhai Soni and others v. United India Insurance Co. Ltd., Baroda], 2018 (2) TN MAC 286 (SC) and judgment made in C.M.A.No.3414 of 2019 dated 28.05.2020, I held as follows:

> "24.In the present case, from the materials available on record, it is seen that the deceased who was riding the motorcycle at the time of accident, borrowed the motorcycle from the 3rd respondent who is the brother of the pillion rider, dashed against another motorcycle and both of them fell down. The pillion rider, who has lodged the complaint, has stated that the deceased dashed against other motorcycle, they fell down and sustained injuries. He has also stated that they could not notice the other motorcycle. From the above materials, it is clear that at the time of accident, the deceased was riding the motorcycle borrowed from the owner and had stepped into the shoes of the owner. In view

of the judgments referred to above, the legal heirs of the deceased who was the tort-feasor, are not entitled to maintain the claim petition under Section 163-A of the Act, as the deceased himself was the tort-feasor."

14.The ratio in the said judgment and ratio of various judgments of the Hon'ble Apex Court referred to above are squarely applicable to the facts of the present case. In view of the well settled judicial pronouncement that owner of the vehicle cannot claim compensation against his own insurer and rider of the Two Wheeler who borrows the vehicle from the owner of the vehicle steps into the shoes of the owner, the appellant-Insurance Company is not liable to pay compensation to the 1st respondent. The Tribunal failed to appreciate the scope of Section 163A of the Act and erroneously held that the claim petition filed under Section 163A of the Act is maintainable against the 2nd respondent, owner and appellant-Insurance Company, as insurer. In view of the judgments referred to above, the claim petition filed by the 1st respondent is not maintainable and is liable to be dismissed.

For the above reason, the award of the Tribunal dated 15.07.2013 made in M.C.O.P.No.153 of 2011 is set aside and the Civil Miscellaneous Appeal is allowed. The appellant-Insurance Company is permitted to withdraw the award amount if any deposited to the credit of M.C.O.P. No.153 of 2011. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS-II)

//True copy//

Sub Assistant Registrar

gsa

To

1.The Motor Accident Claims Tribunal
III Additional District & Sessions Judge,
Kallakurichi, Villupuram District.

Copy to
The Section Officer,
V.R Section,
High Court, Madras.

+1 CC to Mr.N. Suresh, Advocate sr 67178.

C.M.A.No.991 of 2014

RR(CO)
SP(23/02/2022)