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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 18.03.2021

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

C.M.A.No.2287 of 2017

The Oriental Insurance Company Limited,
Divisional Office, Divya Towers,
2nd Floor, 15-1, Kottai Main Road,
Salem - 636 001.

... Appellant/Respondent

/versus/

1. Subramaniam,
2. Vasantha,
3.Gowri @ Manju,

... Respondents/Petitioners

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicle Act, 1988, against the award and decree dated 05.01.2017 made in M.C.O.P.No.2309 of 2015 on the file of the Motor Accidents Claims Tribunal, Additional District Judge & Sessions Court, Salem.

For Appellant : Mr.S.Arun Kumar

For Respondent : No appearance

Amicus Curiae : Mr.U.M.Ravichandran

J U D G M E N T

This Appeal is filed by the Insurance Company rising a very pertinent question regarding the liability of the Insurance Company in the claim petition filed under Section 163-A of the Motor Vehicles Act, to indemnify the vehicle owner when the driver of the vehicle insured is the tortfeasor.

2. In the claim petition filed under Section 163-A of the Motor Vehicle Act, by the legal representative of the accident victim seeking compensation of Rs.25,00,000/-. The Tribunal awarded Rs.6,12,000/- payable by the Insurance Company. The said award is under challenge in this appeal denying liability to indemnify the vehicle owner.



3. In spite of notice, the respondents have not entered appearance. This Court taking note of the fact that, a very pertinent legal issue been raised by the Appellant had appointed Mr.U.M.Ravichandran as Amicus Curiae to assist the Court to decide whether the owner of the vehicle/rider/person authorised by the owner is covered under section 163-A of Motor Vehicles Act.

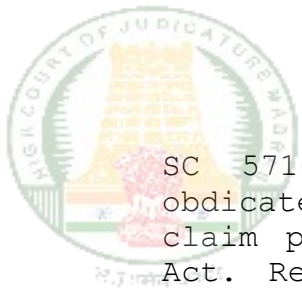
4. Before advertng to the merits of the appeal for proper appreciation, the brief fact of the case is given below:-

On 09.08.2015, at about 13.45 hours along Yercadu to Kuppanur main road, Kottayur, the accident victim Srinivasan was riding his Hero Honda Splendor motorcycle bearing registration No.TN-28-AA-3118 along with one Murugan on the pillion. While negotiating the Sengottaiyan Kadu Road the motorcycle rider fell down in the 10 feet pit on the left side of the road and dashed against the coconut tree. In the impact, the rider of the two wheeler died. His parents and unmarried sister filed claim petition against the insurer of the motorcycle which is owned by the accident victim. The claim petition was filed under Section 163-A of Motor Vehicle Act, seeking Rs.25,00,000/- as compensation.

5. The Insurance Company filed counter, wherein, the claim resisted on the ground the deceased is the Tortfeasor and the accident occurred due to his negligence and fault. Therefore, Insurance Company is not liable to pay the Tortfeasor. However, the Tribunal relying upon a judgment rendered by Hon'ble High Court of Sikkim rendered in Oriental Insurance Company Limited -vs- Madansha Sherpa and others reported in 2014 (2) TN MAC 721 (Sikk), held that, the insurance company is liable to pay compensation of Rs.6,12,450/-.

6. This Appeal is filed on the ground that, the claim petition under Section 163-A of M.V.Act, against the Insurance Company is not maintainable for multiple reasons. Primarily, the petition under Section 163-A M.V.Act, can be filed only if the deceased annual income is less than Rs.40,000/-. Whereas, in this case the monthly income of the claimant is mentioned as Rs.18,000/- and therefore, the claimants are not eligible to file petition under Section 163-A. Furthermore, being the tortfeasor, there is no statutory requirements on the part of the insurance Company under Section 147 of Motor Vehicle Act, to indemnify the vehicle owner, who himself being the tortfeasor.

7. Mr.U.M.Ravichandran appointed as Amicus Curiae would rely upon the Hon'ble Supreme Court Judgment rendered in United India Insurance Company -vs- Sunil Kumar and another: [AIR 2017



SC 5710] and submitted that the Insurance Company cannot abdicate its responsibility on the ground of negligence in a claim petition filed under Section 163-A of the Motor Vehicle Act. Referring Section 163-A of the Motor Vehicle Act, which commences with non abstantee clause, the learned Amicus contended that the authorised insurer is liable to pay the compensation as indicated in the schedule-II of the Motor Vehicle Act. The Learned Amicus read out that paragraph Nos.7 & 8 in the Sunil Kumar case cited supra and submitted that, exonerating the Insurance company will defeat the very purpose of inserting Section 163-A of Motor Vehicles Act.

8. For better understanding, the relevant paragraph Nos.7 & 8 of the Hon'ble Supreme Court in Sunil Kumar case cited supra is extracted below:-

"7. As observed in Hansrajbhair V. Kodala (2001) 5 SCC 175, one of the suggestions made by the Transport Development Council was "to provide adequate compensation to victims of road accidents without going into long-drawn procedure." As a sequel to the recommendations made by the Committee and the Council, Section 140 was enacted in the present Act in place of Section 92-A to 92-E of the Old Act. Compensation payable thereunder, as under the repealed provisions, continued to be on the basis of no fault liability though at an enhanced rate which was further enhanced by subsequent amendments. Sections 140 and 141 of the present Act make it clear that compensation payable thereunder does not foreclose the liability to pay or the right to receive compensation under any other provision of the Act or any other law in force except compensation awarded under Section 163-A of the Act. Compensation under Section 140 of the Act was thus understood to be in the nature of an interim payment pending the final award under Section 166 of the Act. Section 163-A, on the other hand, was introduced in the New Act for the first time to remedy the situation where determination of final compensation on fault basis under Section 166 of the Act was progressively getting protracted. The Legislative intent and purpose was to provide for payment of final compensation to



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a class of claimants (whose income was below Rs.40,000/- p.a) on the basis of a structured formula without any reference to fault liability. In fact, in Hansrajbhai V. Kodala (2001) 5 SCC 175, the bench had occasion to observe that:

"15....Compensation amount is paid without pleading or proof of fault, on the principle of social justice as a social security measure because of ever-increasing motor vehicle accidents in a fast-moving society. Further, the law before insertion of Section 163-A was giving limited benefit to the extent provided under Section 140 for no-fault liability and determination of compensation amount on fault liability was taking a long time. That mischief is sought to be remedied by introducing Section 163-A and the disease of delay is sought to be cured to a large extent by affording benefit to the victims on structured-formula basis. Further, if the question of determining compensation on fault liability is kept alive it would result in additional litigation and complications in case claimants fail to establish liability of the owner of the defaulting vehicles."

8. From the above discussion, it is clear that grant of compensation under Section 163-A of the Act on the basis of the structured formula is in the nature of a final award and the adjudication thereunder is required to be made without any requirement of any proof of negligence of the driver/owner of the vehicle(s) involved in the accident. This is made explicit by Section 163A(2). Though the aforesaid section of the Act does not specifically exclude a possible defence of the Insurer based on the negligence of the claimant as contemplated by Section 140(4), to permit such defence to be introduced by the Insurer and/or to understand the provisions of



Section 163A of the Act to be contemplating any such situation would go contrary to the very legislative object behind introduction of Section 163A of the Act, namely, final compensation within a limited time frame on the basis of the structured formula to overcome situations where the claims of compensation on the basis of fault liability was taking an unduly long time. In fact, to understand Section 163A of the Act to permit the Insurer to raise the defence of negligence would be to bring a proceeding under Section 163A of the Act at par with the proceeding under Section 166 of the Act which would not only be self-contradictory but also defeat the very legislative intention."

9. The learned Counsel appearing for the Appellant/Insurance Company submitted that the subsequent judgment of the Hon'ble Supreme Court rendered in Ram Kiladi and another -vs- The United India Insurance Co Ltd: reported in 2020 (1) TNMAC 1 (SC), has given quietest to this issue and the point under consideration is no more res integra.

10. In Ram Khiladi & another vs. The United India Insurance Company & Another reported in 2020 (1) CTC 443, the Hon'ble Supreme Court while considering the dictum laid in Ningamma case in respect of claim petitions filed under 163-A of the Act, held that the liability of the insurer to pay the rider, who is the borrower of the vehicle depends upon the terms of policy and policy coverage. The Hon'ble Supreme Court noticing that insurer has collected premium for PA cover for owner/driver, held that, the premium collected from the owner/insurer under personal accident coverage will extend to the borrower of the vehicle who enters the shoes of the owner/insured.

11. For better understanding, the relevant passage of the Supreme Court Judgment in Ram Khiladi case is extracted below :-

"It is true that, in a claim under Section 163A 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



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or default of the owner of the vehicle concerned. It is also true that the claim petition under Section 163A 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 163A 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 163A of the Act against the owner and insurer of the vehicle bearing registration No. RJ 02 SA 7811. In the present case, 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. In the present case, as observed hereinabove, the deceased cannot be said to be a third party with respect to the insured vehicle bearing registration No. RJ 02 SA 7811. 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. As held by this Court in the case of Dhanraj (supra), an insurance policy covers the liability incurred by the insured in respect of death of 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. In the said decision, it is further held by this Court that Section 147 does not require an insurance company to assume risk for death or bodily injury to the owner of the vehicle.

5.6 In view of the above and for the reasons stated above, in the present case, as the claim under Section 163A of the Act was made only against the owner and insurance company of the vehicle which was being driven by the deceased himself as borrower of the vehicle from the owner of the vehicle and he would be in the shoes of the owner, the High Court has rightly observed and held that such a claim was not



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maintainable and the claimants ought to have joined and/or ought to have made the claim under Section 163A of the Act against the driver, owner and/or the insurance company of the offending vehicle i.e. RJ 29 2M 9223 being a third party to the said vehicle.

.....

5.8 However, at the same time, even as per the contract of insurance, in case of personal accident the owner-driver is entitled to a sum of Rs.1 lakh. Therefore, the deceased, as observed hereinabove, who would be in the shoes of the owner shall be entitled to a sum of Rs.1 lakh, even as per the contract of insurance. However, it is the case on behalf of the original claimants that there is an amendment to the 2 nd Schedule and a fixed amount of Rs.5 lakh has been specified in case of death and therefore the claimants shall be entitled to Rs.5 lakh. The same cannot be accepted. In the present case, the accident took place in the year 2006 and even the Judgment and Award was passed by the learned Tribunal in the year 2009, and the impugned Judgment and Order has been passed by the High Court in 10.05.2018, i.e. much prior to the amendment in the 2nd Schedule. In the facts and circumstance of the present case, the claimants shall not be entitled to the benefit of the amendment to the 2nd Schedule. At the same time, as observed hereinabove, the claimants shall be entitled to Rs. 1 lakh as per the terms of the contract of insurance, the driver being in the shoes of the owner of the vehicle."

12. The Learned Counsel for the appellant distinguishing the Sunil Kumar case cited supra, submitted that, it is a third party claimant. Whereas, in the instant case, the claimants himself is the owner of the vehicle and the insured. Therefore, the dictum laid down in Sunil Kumar case cited supra has no application in the present case.

Section 147 of Motor Vehicle Act reads as below:-
Requirements of policies and limits of liability



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(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 injury to any person including owner of the goods or his authorised representative carried in the motor vehicle or damage to any property of a third party caused by or arising out of the use of the motor vehicle in a public place;

(ii) against the death of or bodily injury to any passenger of a transport vehicle, except gratuitous passengers of a goods vehicle, caused by or arising out of the use of the motor vehicle in a public place.

Explanation:- For the removal of doubts, it is hereby clarified 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) Notwithstanding anything contained under any other law for the time being in force, for the purposes of third party insurance related to either death of a person or grievous hurt to a person, the Central Government shall prescribe a base premium and the liability of an insurer in relation to such premium for an insurance policy under sub-section (1) in consultation with the Insurance Regulatory and



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Development Authority.

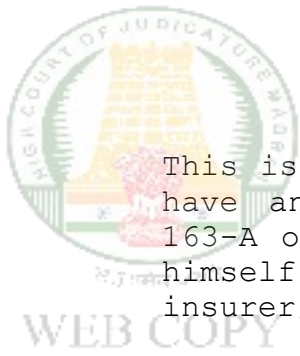
(3) A policy shall be of no effect for the purposes of this Chapter unless and until there is issued by the insurer in favour of the person by whom the policy is effected, a certificate of insurance in the prescribed form and containing the prescribed particulars of any condition subject to which the policy is issued and of any other prescribed matters; and different forms, particulars and matters may be prescribed in different cases.

(4) Notwithstanding anything contained in this Act, a policy of Insurance issued before the commencement of the Motor Vehicles (Amendment) Act, 2019 shall be continued on the existing terms under the contract and the provisions of this Act shall apply as if this Act had not been amended by the said Act.

(5) Where a cover note issued by the insurer under the provisions of this Chapter or the rules or regulations made there under is not followed by a policy of insurance within the specified 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 or to such other authority as the State Government may prescribe.

(6) Notwithstanding anything contained in any other 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.

13. As far as, claim petition is filed under Section 163-A of the Motor Vehicle Act, was introduced by way of an amendment to enable the under privileged claimants having income less than Rs.40,000/- per annum to get compensation without proving the negligence on the part of the offending vehicle.



This is subject to condition that the accident victim should not have annual income exceeding Rs.40,000/-. Nowhere, in Section 163-A of Motor Vehicles Act, give liberty to the claimants, who himself is a tortfeasor to make a claim against his own insurer/insured.

14. In Ram Khiladi cited supra, the Hon'ble Supreme Court has clearly clarified the position and has categorically held that the tortfeasor being the owner/driver of the vehicle, can have no right to claim any compensation against his own insurer. Sunil Kumar case cited supra, which is earlier in point of time is in respect of third party claim where the Apex Court answered in negative the reference whether the insurance company can raise the defence/plead of negligence.

15. In this case, the victim who is the insured, himself has voluntarily by reckless driving, fell into 10 feet pit and dashed against the coconut tree. He being the tortfeasor his legal representatives cannot claim compensation against his own Insurance Company under Section 163-A of the Act. There is no contractually agreement between the insurer and insured to indemnify him for his own fault, except the personal accident cover of Rs.1,00,000/- for which additional premium has been paid. Being a fatal accident, the claimants are entitled for a Personal Accident coverage of limited liability of Rs.1,00,000/- payable under the Personal Accident Cover, being the owner-cum-rider of the two wheeler. Since, an additional premium of Rs.50/- being collected from the vehicle owner, who is the deceased for personal accident. Therefore, they are liable to pay the agreed liability of Rs.1,00,000/-. The claimants are entitled for receive the same, if they have not so far received it.

16. Therefore, as per the terms of the Insurance Policy contract the insurer ought to have paid Rs.1,00,000/- to the claimants within six calendar month from the death of insured, without forcing the claimants to file petition under Section 163-A of the Act or it should have conceded before the Tribunal their limited liability to pay Rs1,00,000/-. Hence, this Court following the dictum laid in Ram Khiladi case cited supra, set aside the Tribunal order and allowed the Appeal.

17. The Appellant/Insurance Company is directed to pay a sum of Rs.1,00,000/- to the claimants with 7.5% interest from the date of filing the petition till the date of realisation. The said award amount shall be deposited within a period of 8 weeks from the date of receipt of a copy of this judgment. On such deposit, the claimants are permitted to withdraw the same on filing proper application.



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18. Accordingly, the Civil Miscellaneous Petition is
Partly Allowed. No costs.

Sd/-
Assistant Registrar(CS VIII)

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Sub Assistant Registrar

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To:-

1. The Motor Accidents Claims Tribunal,
Additional District Judge & Sessions Court,
Salem.
2. The Section Officer,
V.R.Section,
High Court, Madras.

+1CC to Mr.S.Arunkumar, Advocate, Sr.No.18053

C.M.A.No.2287 of 2017

CP (CO)
K.RK. (28.10.2021)