IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.09.2021

CORAM:

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A.No.2418 of 2017
and C.M.P.No.13075 of 2017

The Manager,
M/s. Iffco Tokio General Insurance Company Limited,
Motor Third Party Claim Office,
No.28, 1st & 2nd Floor,
North Usman Road, T.Nagar,
Chennai - 600 017. .. Appellant/2nd Respondent

Vs.

1. D.C.Merry Selvi
2. C.Damienpatrick
3. C.Sruthiselin
4. R.Pilominammal ...Respondents 1 to 4/Petitioners 1 to 4
5. G.Jayapal ..5th Respondent/1st Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act seeking to set aside the Judgment and Decree dated 23.02.2017, passed by the Motor Accidents Claims Tribunal, District Court No.II, Kanchipuram in M.C.O.P.No.228 of 2011.

For Appellant : Ms.Harini
for M/s.M.B.Gopalan Associate
For Respondent 1 to 3: Mr.M.Sivakumar
R4-Died
R5-No Appearance

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J U D G M E N T
(The case has been heard through video conference)

This appeal has been filed by the insurance company challenging its liability to pay compensation under the impugned award dated 23.02.2017, passed by the Motor Accidents Claims Tribunal, District Court No.II, Kanchipuram, in M.C.O.P.No.228 of 2011.

2. The appellant/insurance company has challenged the impugned award on the ground that the respondents/claimants cannot invoke the provisions of Section 163A of the Motor Vehicles Act as the deceased himself was a tortfeasor and was not a third party. The respondents 1 to 4/claimants are the dependents of the deceased D.R.Christhuraj, who died on 31.10.2010, as a result of a motor accident involving the insured motorcycle viz., TVS Sport, bearing Registration No.TN-21-AF-7842. The accident happened while the deceased was riding the insured motorcycle and a buffalo came in front of the two wheeler, which resulted in the deceased applying sudden brake and as a result of the same, he fell down from the vehicle and sustained grievous injuries, which resulted in his death.

3. Admittedly, no other third party is involved in the accident. As is seen from the evidence available on record, the deceased was neither (a) the registered owner of the vehicle insured nor (b) the owner cum driver of the insured vehicle nor (c) registered owner holding an effective driving licence.

4. The claim was filed under Section 163A of the Motor Vehicles Act. The Tribunal has erroneously held the appellant/insurance company to pay compensation on the erroneous finding given by it that the claimants need not prove negligence under Section 163A of the Motor Vehicles Act. Though, it is undoubtedly true that the claimants need not prove negligence under Section 163A of the Motor Vehicles Act, the deceased cannot himself be a tortfeasor, even if the claim is made under Section 163A of the Motor Vehicles Act.

5. In the case on hand, the deceased, though was having a valid driving licence at the time of the accident, did not satisfy the other two conditions namely that he was neither a registered owner of the vehicle insured nor the owner cum driver of the insured vehicle. Further, the deceased was admittedly not a third party as he has borrowed the vehicle from the insured and therefore he has stepped into the shoes of the insured.

6. It is well settled law that the claimants must satisfy the aforesaid three conditions for the purpose of making claim even under Section 163A of the Motor Vehicles Act, even though under the said provision, negligence need not be proved. In the case on hand, since the claimants have not satisfied the aforesaid three conditions and the deceased himself was a tortfeasor, as seen from the pleadings of the claimants in the

claim petition, the Tribunal by total non-application of mind to the settled position of law has erroneously held that the insurance company is liable to pay the compensation only on the ground that under Section 163A of the Motor Vehicles Act, negligence need not be proved. Hence, the findings of the Tribunal holding the insurance company liable to pay the compensation will have to be set aside by this Court and accordingly the same is set aside. In so far as the personal accident coverage mentioned in the insurance policy (Ex.R1) before the Tribunal is concerned, the claimants are also not entitled for any personal accident coverage as the deceased was not a third party and he himself was a tortfeasor to the accident.

7. In the result, the impugned order dated 23.02.2017, passed by the Motor Accidents Claims Tribunal, District Court-II, Kanchipuram in M.C.O.P.No.228 of 2011 is set aside and the appeal is allowed. Consequently, the connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar(R)

// True Copy //

Sub Assistant Registrar

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To

1. The Motor Accidents Claims Tribunal
District Court No.II, Kanchipuram.

2. The Section Officer,
VR Section, High Court, Madras.

+1cc to Mr.C.Prabakaran, Advocate SR.No.45964

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AK(CO)
CB(23/11/2021)