BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reservation	10.02.2021
Date of Judgment	27.04.2021

CORAM
THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI
C.M.A(MD)No.1054 of 2016
and
CMP(MD)No.9450 of 2016

National Insurance Company Limited,
Pondicherry
Rep. By its Branch Manager : Appellant/2nd Respondent

Vs.

1.S.V.Subramanian : 1st Respondent/Petitioner
2.Sevugan Chettiar : 2nd Respondent/
1st Respondent

PRAYER:- Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988 against the award passed by the Motor Accident Claims Tribunal (Sub Court), Devakottai, made in MCOP No.84 of 2010, dated 16.04.2014.

For Appellant : Mr.S.Srinivasa Raghavan

For 1st Respondent : Mr.B.Muruganandan

For 2nd Respondent : No appearance

J U D G M E N T

This appeal has been filed challenging the award passed by the Motor Accident Claims Tribunal (Sub Court), Devakottai, made in MCOP No.84 of 2010, dated 16.04.2014.

2.The brief facts of the case is that on 28.03.2005, when the claimant S.V.Subramanian was driving the Maruthi Zen Car PY-01-U-1515, while one Ramanathan was travelling in the Car and at 12.00 night near Shanmuganathan Engineering College, the front side of the Car suddenly burst and due to it, the Car lost control and dashed against a tamarind tree on the road side. In the accident, both of them sustained injuries and they were immediately taken to Karaikudi Saleem Hospital, where they were taking treatment between 29.03.2005 and 12.04.2005. The claimant herein filed a claim petition seeking compensation of Rs.15,00,000/- for the injuries sustained by him in the accident.

3.In the counter filed by the Appellant Insurance Company, they disputed the manner of accident and their liability to pay compensation.

4.Before the tribunal, on the side of the claimants, 3 witnesses were examined and marked 29 documents. On the side of the Appellant Insurance Company, 1 witness was examined and 2 documents were marked.

5.The Tribunal, on consideration of oral and documentary evidence adduced by the parties, came to the conclusion that the driver of the offending vehicle has caused the accident and awarded compensation of Rs.3,05,455/- together with interest @ 7.5% p.a, to the claimant herein. Aggrieved over the same, the Insurance Company is before this court as appellant.

6.Heard both sides and perused the materials available on record.

7.The learned counsel appearing for the Appellant Insurance Company submitted that the claimant herein is the son of the owner of the Car and he borrowed the Car from his father and met with the accident and the claimant is a tort-feasor and the accident took place on account of his own negligence and the claimant stepped into the shoes of the owner of the vehicle and there was no intervening agency to cause the accident and the claimant is not a third party to the policy of the insurance and the Insurance Company is not liable to pay the compensation to the claimants.

8.On the other hand, the learned counsel appearing for the 1st respondent/claimant argued that he is a third party in respect of the accident and hence, the Insurance Company is liable to pay the compensation to the claimant.

9.The main contention raised on the side of the appellant/2nd respondent is that the claimant borrowed the vehicle from his father and hence, he stepped into the shoes of the owner and further, he is the tort-feasor and hence, the claimant cannot claim compensation as against the Insurance Company of his own vehicle. For that, the learned counsel appearing for the appellant/2nd respondent submitted a ruling reported in **2009(2) TN MAC 169(SC) Ningamma and another Vs. The United India Insurance Company Limited and Ramkhiladi and another Vs. The United India Insurance Company and another.**

10.In this case, the claimant filed the claim petition under section 166 of the Motor Vehicles Act, as if he was a third party to the offending vehicle. On perusal of the decision in the case of **Ramkhiladi and another Vs. The United India Insurance Company and another [2020(2) SCC 550]**, it reveals that when any person borrowed the vehicle from another, then he is treated that he stepped into the shoes of the owner of the vehicle. In that case, in para in para 5.8, it has been held as follows:-

"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 2nd 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 2 nd 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. 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.*

11.In this case, the offending vehicle was belonged to the father of the injured and the injured borrowed the offending vehicle from his father. Hence, it is held that the claimant stepped into the shoes of the owner and he is not a third party in respect of the offending vehicle. Hence, the claim petition filed under section 166 of the Motor Vehicles Act is not maintainable. Therefore, the argument put forth on the side of the claimant stating that he is a third party in respect of the accident is not at all acceptable.

12.In this case, the insurance policy for the offending vehicle is marked as Ex.R1. On perusal of the Ex.R1, it reveals that the P.A coverage for the owner cum driver is Rs.2,00,000/-. This court has already held that the claimant is stepped into the shoes of the owner. Further, the injured is also a tort-feasor. Therefore, as per Ex.R1, the claimant is entitled to Rs.2,00,000/- towards compensation from the appellant Insurance Company.

13.In view of the above findings, the Civil Miscellaneous Appeal is partly allowed, by setting aside the award of the tribunal. The 1st respondent/claimant is entitled to only a sum of Rs.2 Lakhs with interest @ 7.5% per annum from the date of claim petition till realization. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (AE)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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Note :
In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

1.The Subordinate Judge,
Motor Accident Claims Tribunal,
Devakottai.

2.The Record Keeper-2 copies
VR Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to Mr.S.SRINIVASA RAGHAVAN, Advocate (SR-17708[F] dated 27/04/2021)

+1 CC to Mr.B.MURUGANANDAM, Advocate (SR-17793[F] dated 28/04/2021)

Judgement made
in CMA(MD)No.1054 of 2016
27.04.2021

KM(27.05.2021) 5P 6C