

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT****Dated: 16.09.2021****CORAM:****THE HONOURABLE MRS. JUSTICE T. KRISHNAVALLI**

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C.M.A(MD)No.462 of 2016

1.S.Petchiammal
2.Minor S.Dinesh Karthick
(Minor 2nd Appellant represented
by his mother and Natural Guardian
1st Appellant)
3.S.Pappathiammal : Appellants/Claimants

Vs.

1.A.Tensingh
2.The Branch Manager,
Bajaj Alliance General Insurance
Company Limited,
D.No.108, 2nd Floor,
Opposite to Kadhi Bhavan
Crime Branch,
T.P.K Road, Madurai. : Respondents/Respondents

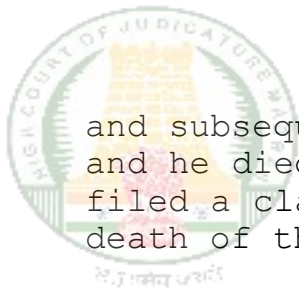
PRAYER: Civil Miscellaneous Appeal has been filed under Section 173 of Motor Vehicles Act against the award, dated 29.09.2015 made in MCOP No.171 of 2008 on the file of Motor Accident Claims Tribunal (Sub Court), Srivilliputtur.

For Appellants : Mr.M.Ashok Kumar
For 1st Respondent : Mr.P.Sivachandran
For 2nd Respondent : Mr.J.S.Murali

J U D G M E N T

Challenge made in this appeal is to the award, dated 29.09.2015 made in MCOP No.171 of 2008 on the file of Motor Accident Claims Tribunal (Sub Court), Srivilliputtur.

2.The short facts of the case is that on 31.05.2008 at about 11.00 pm, when the deceased Saravanan along with one employee Pallavan gone to Rajapalayam in the Two Wheeler TN-67-M-7956 from Srivilliputtur to Rajapalayam, near RTO Office on the left side of the road, in the opposite direction, a person suddenly crossed the road and dashed against the Two Wheeler, resulting which, the said person died on the spot. Due to the said accident, Saravanan and Pallavan were thrown out and sustained injuries and the said Saravanan was admitted in the Government Hospital at Srivilliputtur



and subsequently, he was taken to Madurai Government Rajaji Hospital and he died on 11.06.2008. The legal heirs of the deceased Saravanan filed a claim petition seeking compensation of Rs.6,00,000/- for the death of the deceased Saravanan.

3.The Tribunal, upon consideration of oral and documentary evidence, dismissed the claim petition filed by the claimants. Challenging the dismissal order, the claimants are before this court.

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

5.The learned counsel appearing for the appellants/claimants argued that as per the dictum of the Hon'ble Apex Court, the determination of who is at fault is foreign, when the claim is made invoking section 163-A of the Motor Vehicles Act and the legislature never ever wanted the claimant to prove the negligence on the part of the driver or owner of the vehicle and Section 163-A deals with no fault liability and as such, the application filed under section 163-A is liable to be allowed and prays that the claimants are entitled to compensation as claimed. For that, the learned counsel appearing for the appellants/claimants submitted the following decisions:-

(1)2018(2)TN MAC 499 (National Insurance Company Limited Vs. P.Suresh);

(2)2019(2) TN MAC 775(DB) (Cal.) (Jogomaya Mondal and others Vs. National Insurance Company Limited and others);

(3)2018 ACJ 1 (United India Insurance Company Limited Vs. Sunil Kumar and another);

(4)2013(6) CTC 891 (United India Insurance Company Limited Vs. Sunil Kumr and another);

(5)2011 ACJ 940 (New India Insurance Company Limited Vs. Muna Maya Basant and another).

6.On the other hand, the learned counsel appearing for the 2nd respondent/2nd respondent argued that the accident occurred due to self negligence of the deceased and the deceased is not a 3rd party and as per the policy condition, he stepped into the shoes of the owner at the time of accident and hence, the claim petition is not maintainable. For that, the learned counsel appearing for the 2nd respondent/2nd respondent submitted the following decisions:-

(1)2020(2) TN MAC 445(SC) (Beli Ram Vs. Rajinder Kumar and another); and

(2)2020(1)TN MAC 1 (Ramkhiladi Vs. United India Insurance Company Limited).



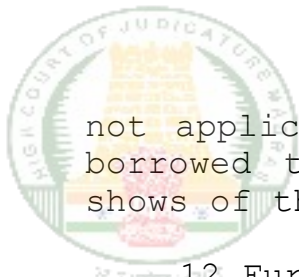
7. It is admitted fact that the deceased Saravanan borrowed the vehicle from the 1st respondent and drove the vehicle with one Pallavan, who is a pillion rider. In respect of the accident, FIR was registered only as against the deceased Saravanan and the criminal case was closed "As abated" since the rider of the vehicle reported to be dead. If the claim petition is filed under section 163(A) of the MV Act, it is not necessary to decide the question of negligence. In this case, FIR was registered as against the deceased. Further, the deceased Saravanan borrowed the vehicle from the 1st respondent and in the decision reported in **2020(1) TN MAC 1 SC (Ramkhiladi and another Vs. United India Insurance Company Limited and another)**, it was held that a person borrowed vehicle from another person and accident took place due to his negligence, then it was held that the victim stepped into the shoes of the owner and he is not a 3rd party.

8. The learned counsel appearing for the appellants/claimants submitted that as per the ruling reported in **2019(2) TN MAC 775 (BD) (Cal.) (Jogomaya Mondal and others Vs. National Insurance Company Limited)**, Second Schedule to Section 163-A amended with effect from 22.05.2018 and subsequently, removed by Amendment Act, 2019 and Section 164 covers what was originally and substantially covered by Section 163-A and Section 164(1) (amended) now gives flat rate of Compensation of Rs.5,00,000/- in Fatal Accident case and Rs.2,50,000/- in grievous hurt case and prays that the claimants are entitled to Rs.5,00,000/- as per the amended Act.

9. On careful perusal of the above ruling, it reveals that SLP is pending before the Hon'ble Supreme Court as against the order passed by the High Court of Calcutta and whether the amendment covers the accident when took place prior to the said amendment is not yet settled and it is pending and hence, the above ruling submitted by the learned counsel appearing for the appellants/claimants, reported in **2019 (2) TN MAC 775 (DB) (Cal.)** is not applicable to this case.

10. Further, the learned counsel appearing for the appellants/claimants submitted that in the connected MCOP No.84 of 2018 on the file of the Motor Accident Claims Tribunal, Srivilliputtur, it was ordered directing the Insurance Company to pay the compensation to the injured and hence, in this case also, the Insurance Company may be directed to pay the compensation to the claimants.

11. On perusal of the order passed in MCOP NO.84 of 2018 on the file of the Motor Accident Claims Tribunal, Srivilliputtur, the claim petition was filed by the pillion rider Pallavan and in respect of the accident, the pillion rider Pallavan is a 3rd party. But in this case, the deceased itself is a tort-feasor and hence, he is not a 3rd party. Hence, the order passed in MCOP No.84 of 2018 on the file of the Motor Accident Claims Tribunal, Srivilliputtur, is



not applicable to this case. In this case, the deceased Saravanan borrowed the alleged vehicle and hence, he had stepped into the shoes of the owner and he is not a 3rd party.

12. Further, in this case, the copy of the Insurance policy relating to the offending vehicle was produced and marked as Ex.R7. On perusal of Ex.R7, additional premium was paid for the owner-cum-driver and it was further stated that in case of accident, the owner-cum-driver is entitled to Rs.1,00,000/- as compensation. In this case also, already it was decided that the deceased Saravanan also stepped into the shoes of the owner. Hence, the legal heirs of the deceased Saravanan are only entitled to get Rs.1,00,000/- as compensation.

13. In view of that, this Civil Miscellaneous Appeal is partly allowed. The impugned judgment, dated 29.09.2015 passed in MCOP No.171 of 2008 by the Motor Accident Claims Tribunal (Sub Court), Srivilliputtur, is set aside. The 2nd respondent Insurance Company is directed to deposit a sum of Rs.1,00,000/- together with interest at the rate of 7.5% p.a. from the date of claim petition till the date of realization, to the credit of the MCOP No.171 of 2008 on the file of the Motor Accident Claims Tribunal (Sub Court), Srivilliputtur, within a period of six weeks from the date of receipt of a copy of this order. On such deposit, the 1st appellant/1st claimant is entitled to withdraw Rs.50,000/- and 3rd appellant/3rd claimant is entitled to withdraw Rs.25,000/- together with accrued interest and costs. In so far the 2nd appellant/2nd claimant is concerned, he is entitled to get Rs.25,000/-. Since, the 2nd appellant/2nd claimant is a minor, his share shall be deposited in any one of the Nationalized Bank, till he attains majority. The 1st appellant/1st claimant being the mother of the 2nd claimant is entitled to withdraw the accrued interest on the deposited amount once in three months for the welfare of the minor. No costs.

Sd/-

Assistant Registrar (CS-I)

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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,



2.The Record Keeper,
V.R Section,
Madurai Bench of Madras High Court,
Madurai.

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+1 CC to M/s.M.ASHOK KUMAR, Advocate (SR-29398[F] dated 16/09/2021)

+1 CC to M/s.J.S.MURALI, Advocate (SR-29286[F] dated 16/09/2021)

C.M.A(MD) No.462 of 2016

16.09.2021

RD(27.09.2021) 5P 6C