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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 23.12.2020

Pronounced On : 25.01.2021

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

C.M.A(MD)No.48 of 2015

The Branch Manager,
New India Insurance Company Limited,
Sivakasi. : Appellant /2nd Respondent

Vs.

1.Franklin Arputharaj : 1st Respondent/Petitioner

2.Solaiappan :2nd Respondent/1st Respondent

(Second Respondent is dispensed with vide order dated 14.12.2017)

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 30.08.2012 passed in M.C.O.P.No.62 of 2010 on the file of the Motor Accidents Claims Tribunal (Principal Sub Court)Tenkasi.

For Appellant	: Mr.I.Robert Chandrakumar, for G.Prabhu Rajadurai.
For 1st Respondent	: No Appearance
For 2nd Respondent	: Dispense with dt.14/12/2017

J U D G M E N T

The Civil Miscellaneous Appeal has been filed under Section 173 of Motor Vehicle Act, 1988, against the judgment and decree dated 30.08.2012 passed in M.C.O.P.No.62 of 2010 on the file of the Motor Accidents Claims Tribunal (Principal Sub Court) Tenkasi.

2.The Appellant/Insurer, who was made liable to pay compensation of Rs.97,371/- with interest at 7.5% per annum to the claimant, who sustained injuries, consequent to an accident occurred on 01.07.2009, challenged the liability mulcted on it, mainly on the ground that the claimant being the tort-feaser cannot maintain any claim.

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3.The case of the claimant is that on 01.07.2009, when the claimant was proceeding in his Car bearing Registration No.TN 67 0945 along with his wife at Tenkasi to Tirunelveli Main Road towards East, at the place near Keezhapavoor, Sub Electricity Office, in order to give way for the two wheeler, which came from east to west, had turned the Car towards left side of the road and at that time, the claimant had lost the control of the Car and the same dashed against the neem tree and that the claimant had sustained injuries all over his body.

4.The claimant's further case is that he had suffered bone injuries, that he had taken inpatient treatment in SidambaraNadar Janakiammall Hospital, that due to the injuries suffered, he was unable to do any work as before and that therefore, he claimed compensation of Rs.12,00,000/-.

5.The defence of the Appellant/Insurer is that the claimant himself negligently drove the vehicle and invited the accident, that the claimant is the tort-feaser and accused for his own fault and that therefore, the Insurer is not liable for any claim. The Insurer has also taken a plea that the injuries suffered by the claimant are all simple in nature and there is no disability at all and that the compensation claimed is excessive.

6.During enquiry, the claimant has examined himself as P.W.1 and examined Dr.Mohammed Subair as P.W.2 and exhibited eight documents as Ex.P.1 to Ex.P.8. The second respondent/owner had remained ex-parte before the trial Court. On the side of the Appellant/Insurer, their Executive Officer Mr.Mohan has been examined as R.W.1 and exhibited the copy of the Insurance Policy under Ex.R.1.

7.The trial Court, upon considering the evidence, both oral and documentary, has passed the impugned award, directing the Appellant/Insurer to pay the total compensation of Rs.97,371/- with interest at 7.5% per annum. Aggrieved by the said award, the Appellant/Insurer has come forward with the present appeal.

8.The points for consideration are :

(i) Whether the tribunal erred in fastening the liability on the Insurer, despite the production of materials to show that the claimant is the tort-feaser and accused for his own fault and that the claim petition itself is legally unsustainable?

(ii) Whether the impugned award, dated 30.08.2012 is liable to be interfered with?

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9.The learned counsel for the Appellant/Insurer would contend that the claimant has himself admitted that he was the owner of the offending vehicle and he had driven the car at the time of accident, that the FIR and charge sheet were filed only against the claimant, that the Tribunal has failed to consider that the tort-feaser cannot claim compensation under the provision of Motor Vehicles Act and that therefore, the claim petition itself is legally not maintainable.

10.At this juncture, it is necessary to refer the decisions relied on by the learned counsel for the Appellant:

(i) 2009 (2) TN MAC 169 (SC):

Ningamma and another Vs. United India Insurance Company Limited :

> “13.In the light of the aforesaid submissions, the question that falls for our consideration is whether the legal representatives of a person, who was driving a motor vehicle, after borrowing it from the real owner meets with an accident without involving any other vehicle, would be entitled to Compensation under Section 163A of MV A or under any other provision(s) of law and also whether the Insurer who issued the Insurance Policy would be bound to indemnify the deceased or his legal representative?..........
>
> 18. In the case of Oriental Insurance Company Ltd. v. Rajni Devi and Others, (2008) 5 SCC 736, wherein one of us, namely, Hon'ble Justice S.B. Sinha is a party, it has been categorically held that in a case where third party is involved, the liability of the insurance company would be unlimited. It was also held in the said decision that where, however, compensation is claimed for the death of the owner or another passenger of the vehicle, the contract of insurance being governed by the contract qua contract, the claim of the claimant against the insurance company would depend upon the terms thereof. It was held in the said decision that Section 163-A of the MVA cannot be said to have any application in respect of an accident wherein the owner of the motor vehicle himself is involved. The decision further held that the question is no longer res integra. The liability under section 163-A of the MVA is on the owner of the vehicle. So a person cannot be both, a claimant as also a recipient, with respect to claim. Therefore, the heirs of the deceased could not have maintained a claim in terms of Section 163-A of the MVA. In our considered opinion, the ratio of the aforesaid decision is clearly applicable to the facts of the present case. In the present case, the deceased was not the owner of the motorbike in question. He borrowed the said motorbike from its real

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owner. The deceased cannot be held to be employee of the owner of the motorbike although he was authorised to drive the said vehicle by its owner, and therefore, he would step into the shoes of the owner of the motorbike.

20.When we apply the said principle into the facts of the present case we are of the view that the claimants were not entitled to claim compensation under Section 163-A of the MVA and to that extent the High Court was justified in coming to the conclusion that the said provision is not applicable to the facts and circumstances of the present case. However, the question remains as to whether an application for demand of compensation could have been made by the legal representatives of the deceased as provided in Section 166 of the MVA. The said provision specifically provides that an application for compensation arising out of an accident of the nature specified in sub-section (1) of section 165 may be made by the person who has sustained the injury; or by the owner of the property; or where death has resulted from the accident, by all or any of the legal representatives of the deceased; or by any agent duly authorised by the person injured or all or any of the legal representatives of the deceased, as the case may be. When an application of the aforesaid nature claiming compensation under the provisions of Section 166 is received, the Tribunal is required to hold an enquiry into the claim and then proceed to make an award which, however, would be subject to the provisions of Section 162, by determining the amount of compensation, which is found to be just. Person or persons who made claim for compensation would thereafter be paid such amount. When such a claim is made by the legal representatives of the deceased, it has to be proved that the deceased was not himself responsible for the accident by his rash and negligent driving. It would also be necessary to prove that the deceased would be covered under the policy so as to make the insurance company liable to make the payment to the heirs."

(ii) **2019 (1) TN MAC 423 :**

United India Insurance Company Limited Vs. Gnanasigamony and others :

"12.From the materials on record it is seen that in the present case, the deceased was riding the Motorcycle belonging to the 7th Respondent and dashed against the wall of the Panchayat well and sustained injuries. He died due to the injuries. No other vehicle was involved in the accident. In the circumstances, the deceased cannot be termed as Third party. He steps into

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shoes of Owner and at the time of accident, he is the Owner of the vehicle. In such a case, Owner could not himself be a recipient of Compensation as the liability to pay compensation is on him. This issue whether tort-feasor can claim Compensation for his own wrong there is no longer *res integra.* In the Judgment reported in the case of Ningamma and another v. United India Insurance Co.Ltd, 2009(2) TN MAC 169 (SC) : 2009 ACJ 2020, as stated supra, the Hon'ble Apex Court considered this view elaborately and referring to earlier Judgments held that the tort-feaser cannot claim any compensation under Section 163-A of the Act. In the said Judgment, he Hon'ble Apex Court held that any Claim Petition under Section 166 of the Act, Claimant himself has to prove that the deceased was not responsible for the accident by his own rash and negligent. In the present case, the Respondents 1 to 6 filed Claim Petition under Section 166 of the Act and they have to prove that accident was not due to the negligence of the deceased. On the other hand, they themselves have admitted that the accident occurred while the deceased was riding Motorcycle hit against the wall of the Panchayat well and not other vehicle was involved in the accident. Even according to the Respondents no other vehicle was involved in the accident.

13.For the above reason the claim of the Respondents 1 to 6 under Section 166 of the Motor Vehicles Act, is not maintainable by applying ratio of the Judgment of the Hon'ble Apex Court reported in the case of Ningamma and another v. United India Insurance Co.Ltd, 2009(2) TN MAC 169 (SC) : 2009 ACJ 2020. I am of the considered view that the Respondents 1 to 6 are not entitled to any Compensation from the Appellant."

11.In the case on hand, the claimant has laid his claim under Section 163 A of the Motor Vehicles Act. More over, the claimant has filed his claim application against one Solaiappan, alleged to be the owner of the car and its Insurer. But in the claim petition as well as in the evidence, the claimant would admit specifically that the car bearing Registration No.TN 67 0945 was owned by him on the date of accident. According to him, since name transfer was not effected, he had impleaded the previous owner as a formal party and to avoid technical objections. Even R.W.1/Executive Officer of the Appellant/Insurance Company would admit that the car was owned by the claimant/injured at the relevant point of time. So there is no dispute that the claimant was owner of the car on the date of accident and that he alone had driven the car. Admittedly, no other vehicle was involved in the accident. Though

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the claimant's wife has lodged the complaint about the accident, FIR came to be registered against the claimant and charge sheet has also been laid against him.

12.No doubt, the claimant's wife while preferring the complaint, has not alleged that the accident was occurred due to the rash and negligent driving of her husband. But it is admitted that the claimant while attempting to give way to the two wheeler, which came from the opposite direction, diverted his car towards left side of the road and at that time, he had lost his control of the car and dashed against the neem tree. Considering the above, as rightly contended by the learned counsel for the Appellant and as per the legal dictum above mentioned, the claimant being the tort-feaser, cannot claim any compensation under Section 163 A of Motor Vehicles Act. More over, he cannot be termed as a third party and even assuming that the car was belonging to the second respondent herein on the date of accident, the claimant can only be called as a borrower of the vehicle and therefore, it has to be taken that he steps into shoes of owner of the car. If that be the position, owner could not himself be a recipient of compensation, as the liability to pay compensation is on him.

13.In view of the dictum laid down in **Ningamma's** case, I have no hesitation to hold that the claim petition under Section 163 A of the Motor Vehicle Act, is not maintainable. Section 166 of the Motor Vehicle Act, provides that an application for compensation arising out of an accident of the nature specified in Section 165 (1) of the said Act may be made by the injured or by the legal representatives of the deceased or by the owner of the property. Section 147 of Motor Vehicles Act contemplates, the requirements of policies and limits of liability and the same provides that the policy of injuries could also cover cases against any liability which may be incurred by the insurer in respect of death or fatal injury to any person, including owner of the vehicle or his authorized representative carried in the vehicle or arising out of the use of vehicle in the public place.

14.In Ex.R.1/Insurance Policy (Private Car Package Policy), premium was also collected for compulsory P.A to owner cum driver and the limit of liability is two lakh Rupees. R.W.1 in his cross examination would admit that personal accident coverage was taken for Rs.2 lakhs and that PA cover for owner cum driver was made. It is also not in dispute that the Insurance coverage was in force on the date of accident. Regarding quantum of compensation, the appellant has not disputed the same specifically. The trial Court has quantified the compensation at Rs.97,371/- and the same was not challenged at all.

15.Considering the above, since PA coverage for owner cum

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driver was taken and the liability is limited to Rs.2 lakhs, the claimant is certainly entitled to get compensation awarded by Tribunal. Except the above, the appellant has not canvassed any other ground or reason to impugn the award. Hence, this Court decides that the appeal is devoid of merits and is liable to be dismissed and the above points are answered accordingly. Considering the other facts and circumstances, this Court further decides that the parties are to be directed to bear their own costs.

16.In the result, this Civil Miscellaneous Appeal is dismissed and the judgment dated 30.08.2012 passed in M.C.O.P.No.62 of 2010 on he file of the Motor Accidents Claims Tribunal (Principal Sub Court) Tenkasi, is confirmed. Parties are directed to bear their own costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-III)

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Sub Assistant Registrar(CS)

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To

1.The Principal Subordinate Judge,
Motor Accidents Claims Tribunal
Tenkasi.

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

order made in
C.M.A(MD)No.48 of 2015
25.01.2021

KM (11.02.2021) 7P 4C

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