IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 29.11.2022

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI
and
THE HONOURABLE MR.JUSTICE SUNDER MOHAN

C.M.A.No.3530 of 2021
and C.M.P.No.20449 of 2021

The IffcoTokio General Insurance Company Limited
No.43/3, First Floor
100 Feet Road,
Mudaliarpet,
Pondicherry – 605 004. …Appellant

Vs.

1.K.Pazhanivel,
2.P.Mahalakshmi
3.J.Reena Devi ...Respondents

PRAYER : The Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree made in M.C.O.P.No.3974 of 2016 dated 07.08.2021 on the file of the Motor Accidents Claims Tribunal, Special Subordinate Court, Cuddalore.

For Appellant : Mr.M.B.Raghavan
For R1 and R2 : Mrs.Ramya V Rao
For R3 : No appearance

J U D G M E N T

(Judgment of the Court was delivered by SUNDER MOHAN.J.)

Challenging the award passed by the Motor Accidents Claims Tribunal, Special Subordinate Court Cuddalore in M.C.O.P.No.3974 of 2016 dated 07.08.2021 filed under Section 163-A of the Motor Vehicles Act, the appellant had preferred the above appeal.

2.The respondents 1 and 2 filed a claim petition under Section 163–A of the Motor Vehicles Act stating that on 21.05.2006 at about 3 A.M., their son one Mr.P.Nanda Kumar while riding the motorcycle belonging to the third respondent herein bearing Reg.No.PY-01-CH-9037 at Madavamedu while trying to avoid a pedestrian, fell down and sustained grievous injuries and died subsequently. It is the case of the respondents 1 and 2 that the deceased Mr.P.Nanda Kumar was aged 21 years at the time of the accident and was working as a fisherman and was doing sea food business earning a sum of Rs.3,300/- per month. The respondents 1 and 2 therefore claimed a sum of Rs.25,00,000/- towards compensation against the third respondent herein and the appellant/insurer.

3.The third respondent herein remained exparte before the Tribunal.

4.The appellant filed a counter statement denying the averments made in the claim petition. The respondents 1 and 2 are not entitled to compensation since the deceased was a rider of the two wheeler and he had stepped into the shoes of the owner of the two wheeler and as such he is not entitled to compensation under Section 163–A of the Motor Vehicles Act. In any event, the deceased did not have a valid two wheeler license and the compensation sought for by the respondents 1 and 2 is exorbitant and the claim petition is liable to be dismissed and prayed for dismissal of the claim petition.

5.Before the Tribunal, the first respondent himself examined as P.W.1 and marked Ex.P.1 to Ex.P.5. The appellant examined R.W.1 and R.W.2 and marked Ex.R.1 on their side.

6.The Tribunal after considering the pleadings, evidence and documents on record awarded a compensation of Rs.29,75,000/- and directed the appellant to pay the compensation to the respondents 1 and 2, holding that the respondents 1 and 2 need not prove the negligence for the claim made under Section 163-A of the Motor Vehicles Act.

7.Against the said award and decree dated 07.08.2021 made in M.C.O.P.No.3974 of 2016, the appellant has filed the present appeal.

8.The learned counsel for the appellant submitted that the claim under Section 163–A of the Motor Vehicles Act is based on no fault liability principle. Admittedly, the deceased was a permissive user of the borrowed vehicle. It is not the case of the respondents 1 and 2 that the deceased was employed with the owner of the two-wheeler namely third respondent herein and therefore, as a third party he is entitled for compensation. Since the deceased was a borrower of the vehicle he had stepped into the shoes of the owner of the vehicle and Section 163–A of the Act cannot apply wherein the owner of the vehicle himself is involved. Thus, the respondents 1 and 2 cannot maintain a claim against the appellant under Section 163-A of the Motor Vehicles Act and prayed for setting aside the award of the Tribunal.

9.The learned counsel for the appellant relied upon the Judgment of the Hon'ble Apex Court in ***Ramkhiladi and another vs. United India Insurance Co.Ltd*** reported in ***(2020) 2 SCC 550.*** The learned counsel also relied upon the Judgment of the learned Single Judge of this Court in the following cases:-

(i) ***New India Insurance Co.Ltd vs. Gurumoorthy*** reported in ***2021 (2) TNMAC 574.***

(ii) ***The Divisional Manager, the Oriental Insurance Co. Ltd vs. Nagarathinam and others*** in ***C.M.A.No.2132 of 2013 and M.P.No.1 of 2013.***

(iii) ***Branch Manager, National Insurance Co. Ltd. Vs. Vennila and others*** in***C.M.A.No.726 of 2013.***

10.The learned counsel for the respondents 1 and 2 submitted that the Tribunal had considered the submissions and rightly concluded that the respondents are entitled to compensation payable by the appellant. The Tribunal found that the respondents 1 and 2 are entitled to compensation under Section 163 - A of the Motor Vehicles Act and they need not establish the negligence on any person. The learned counsel for the respondents 1 and 2 further submitted that the reading of the Judgment of Hon'ble Apex Court in ***Ramkhiladi and another vs. United India Insurance Co. Ltd*** reported in ***(2020) 2 SCC 550*** shows that the earlier three Judge bench Judgment of Hon'ble Apex Court in ***United Insurance Company Ltd., vs. Sunil Kumar and another*** was not brought to the notice of the Hon'ble Apex Court in ***Ramkhiladi's*** case**.** The learned counsel submitted that the Hon'ble Apex Court in the Judgment of ***United India Insurance Company Limited vs. Sunil Kumar and another*** reported in ***(2019) 12 SCC 398*** held that it is not open for the Insurer to raise any defense of negligence on the part of the victim in a proceeding under Section 163-A of the Motor Vehicles Act and hence the learned counsel prayed for dismissal of the appeal.

11.Heard the learned counsels on either side and perused the materials on record.

12.We find that there is no conflict in the views expressed by the Hon'ble Apex Court in ***Ramkhiladi and another vs. United India Insurance Co. Lt's case*** (cited supra) and ***United India Insurance Company Limited vs. Sunil Kumar and another's*** case (cited supra) as submitted by the learned counsel for the respondents 1 and 2. In Sunil Kumar's case, the Hon'ble Apex Court had dealt with the question as to whether it is open for the Insurer to raise any defence of negligence on the part of the victim in proceedings under Section 163-A Motor vehicles Act. The Hon'ble Apex Court held that the Insurer cannot raise any defence or negligence on the part of the victim. However, the question as to whether the owner of the two wheeler can be both the deceased and recipient was not gone into by the Hon'ble Apex Court in Sunil kumar's case. The said question was considered by the Hon'ble Apex Court in

Ramkhiladi vs Union Insurance company and another (cited supra). The Hon’ble Apex Court held that no fault liability principle incorporated in Section 163 - A of Motor Vehicles Act does not mean that the owner of the Vehicle/Insured can maintain an application under Section 163-A of the Motor Vehicles Act. The Hon'ble Apex Court further held that the borrower of the two wheeler who is tort feasor steps into the shoes of the owner of the two wheeler and hence, he cannot claim compensation under Section 163-A of the Motor Vehicles Act. The relevant portions of the Judgment of the Hon’ble Apex Court in Ramkhiladi's case (cited supra) is extracted herein for the better understanding:-

> ***“9.5.*** *It is true that, in a claim under Section 163-A 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 or default of the owner of the vehicle concerned. It is also true that the claim petition under Section 163-A 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 163-A 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 163-A 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 Dhanraj [Dhanraj v. New India Assurance Co. Ltd., (2004) 8 SCC 553 : 2005 SCC (Cri) 363] , 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 authorised 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."

13.In the instant case also the terms of the Insurance policy is that the appellant is not liable to compensate if the tort feasor is the owner of the two wheeler or any person who steps into the shoes of the owner of the two wheeler. In this case, admittedly the deceased is the borrower of the two wheeler and he is not an employee of the owner, to be treated as third party, who is entitled to claim compensation under Section 163- A of Motor Vehicles Act.

14.One of us sitting single (Ms.Justice V.M.Velumani) has dealt with this issue and held that where the deceased was a tort feasor and a permissive user of the vehicle steps into the shoes of the owner of the two wheeler and as such he is not entitled to compensation. The following are the relevant portions of the Judgments of this Court in ***New India Insurance Co.Ltd vs. Gurumoorthy*** reported in ***2021 (2) TNMAC 574*** which is extracted hereunder for better understanding:-

> *"24.In the present case, from the materials available on record, it is seen that the deceased who was riding the motorcycle at the time of accident, borrowed the motorcycle from the 3rd respondent who is the brother of the pillion rider, dashed against another motorcycle and both of them fell down. The pillion rider, who has lodged the complaint, has stated that the deceased dashed against other motorcycle, they fell down and sustained injuries. He has also stated that they could not notice the other motorcycle. From the above materials, it is clear that at the time of accident, the deceased was riding the motorcycle borrowed from the owner and had stepped into the shoes of the owner. In view of the judgments referred to above, the legal heirs of the deceased who was the tort-feasor, are not entitled to maintain the claim petition under Section 163-A of the Act, as the deceased himself was the tort- feasor. The learned counsel appearing for the respondents 1 and 2 further contended that the deceased was working as a Civil Engineer and was earning a sum of Rs.10,000/- per month, which exceeds the maximum income as mentioned in the II Schedule of the Act. A*

claimant or legal heirs of the deceased can maintain the claim petition under Section 163-A of the Act, if the annual income does not exceed Rs.40,000/- and the Courts can grant compensation as per the structural formula in the II Schedule."

The relevant portions of the Judgment of ***Branch Manager, National Insurance Co. Ltd., vs. Vennila and others*** reported in ***(2021) 1 TN MAC 746*** is as follows:-

> ***21.*** *The issue of maintainability of the claim petition by owner or rider under Section 163-A of the Act is again considered by the Hon'ble Apex Court in the judgment reported in (2020) 1 TN MAC 1 (SC) cited supra, wherein it has been held that claim petition filed under Section 163-A of the Act by owner or borrower of vehicle is not maintainable as borrower steps into the shoes of the owner.*
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> ***22.*** *I had an occasion to consider this issue in C.M.A. No. 3414 of 2019. Considering the judgment of the Honb'le Apex Court, by the judgment dated 28.05.2020, in C.M.A. No. 3414 of 2019, I held that the claimant is not entitled to claim compensation from the insurer of the vehicle in which he was riding, when another vehicle viz., Mahendra Maximo Van driven in a rash and negligent manner dashed against the Motorcycle driven by him. The relevant paragraphs are as follows:*
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> *"19. The judgment reported in (2020) 1 TN MAC 1 (SC) [Ramkhiladi v. United India Insurance Co. Ltd.], relied on by the learned counsel appearing for the appellant is squarely applicable to the facts of the present case. The Hon'ble Apex Court referring to*

earlier judgment, especially (2009) 2 TN MAC 169 (SC) [Ningamma v. United India Insurance Co. Ltd.], categorically held that owner of the vehicle cannot maintain a claim petition against the insurer when the accident has occurred only due to negligence on the part of the other vehicle.

20. In view of the above finding, the reliance placed by the learned counsel appearing for the respondent on the judgments of the Hon'ble Apex Court in (2018) 2 TN MAC 149 (SC) [Shivaji v. United India Insurance Co. Ltd.] and (2017) 2 TN MAC 753 (SC) [United India Insurance Co. Ltd. v. Sunil Kumar] do not advance the case of the respondent. Further, the respondent has stated that accident has occurred only due to rash and negligent driving by Mahendra Maximo Van and the respondent is making a claim against the appellant who is the insurer of Motorcycle driven by the respondent, since the Mahendra Maximo Van is not insured and he cannot claim compensation from the owner of the said vehicle. The reason given for filing claim petition against the appellant is not valid and claim petition is not maintainable under Section 163-A of the Motor Vehicles Act."

***23.** In the present case, from the materials available on record, it is seen that the deceased who was riding Motorcycle borrowed from his employer, the 5th respondent herein, caused accident by hitting the persons who crossed the road, fell down, sustained injuries and died. The FIR was registered against the deceased/rider of the Motorcycle. From the above materials, it is clear that the deceased was riding the Motorcycle borrowed from the owner and had stepped into the shoes of the owner. In view of the judgments referred to above, the legal heirs of the deceased who was the tort-feasor are not entitled to maintain the claim petition under Section 163-A of the Act, as the deceased himself was the tort-feasor."*

The above judgments would clearly show that the deceased is not entitled to claim compensation under Section 163-A of the Motor Vehicles Act since he is a tort feasor and steps into the shoes of the owner of the two wheeler.

15.In the result, we hold that the appellant is not liable to pay any compensation to the respondents 1 and 2. Hence the C.M.A.No.3530 of 2021 is allowed and the award of the Tribunal directing the Appellant to pay compensation is set aside. The Appellant Insurance/ Company is permitted to withdraw the amount, lying in the deposit of the credit of M.C.O.P.No.3974 of 2016 on the file of Motor Accident Claims Tribunal, Special Subordinate Court, Cuddalore, if the award amount has already been deposited by them. It is made clear that if the respondents 1 and 2 have already withdrawn the Award amount, the Appellant/Insurance Company is not entitled to recover the same from the respondents 1 and 2. Consequently, connected miscellaneous petition is closed. No Costs.

(V.M.V.,J) **(S.M.,J)**

29.11.2022

Index: Yes/No
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To

1. The Special Subordinate Judge,
   Motor Accidents Claims Tribunal
   Cuddalore.

2. The Section Officer
   VR Section
   High Court of Madras
   Chennai – 600 104

V.M.VELUMANI,J.
and
SUNDER MOHAN,J.
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