IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.09.2022

CORAM:

THE HON'BLE Ms. JUSTICE P.T.ASHA

C.M.A.No.2167 of 2017
and
Cros.Obj.No.50 of 2019

C.M.A.No.2167 of 2017

IFFCO-TOKIO
General Insurance Company Ltd.,
OKS Building,
Near IT Office, 5, College Road,
2nd Street, Tiruppur-641 602. … Appellant

versus

1.Sakunthala
2.Manoharan
3.Manikandan
4.Subramani … Respondents
(R3 and R4 Set-Ex-parte before
the trial Court).

Cross Objection No.50 of 2019
in C.M.A.No.2167 of 2017

1.Sakunthala
2.Manoharan … Cross Appellant

-vs-

1. IFFCO-TOKIO
General Insurance Company Ltd.,
OKS Building,
Near IT Office, 5, College Road,
2nd Street, Tiruppur-641 602.

2.Manikandan
3.Subramani ...Respondents

Prayer in CMA No.2167 of 2017 : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Order and Decreetal order made in M.C.O.P.No.1675 of 2013 dated 21.11.2016 on the file of the Motor Accident Claims Tribunal (I-Additional District Court), Tiruppur.

Prayer in Cross Objection No.50 of 2019: Cross Objection filed under Order 41 Rule 22 C.P.C., against the Order and Decreetal order made in M.C.O.P.No.1675 oif 2013 dated 21.11.2016 on the file of the Motor Accident Claims Tribunal (I-Additional District Court), Tiruppur.

For Appellant in C.M.A.No.2167 of 2017 & 1st respondent in Cross Objection No.50 of 2019	: M/s.K.Saraswathi
For respondents 1 and 2 in C.M.A.No.2167 of 2017	: Mr.Pa.P.Thangavel
	: R3 & R4 Ex-parte

COMMON JUDGMENT

The 3rd respondent / Insurance Company has filed the above Appeal challenging the order passed in M.C.O.P.No.1675 of 2013 on the file of the Motor Accident Claims Tribunal (I-Additional District Court), Tiruppur.

2. The facts in brief is herein below narrated and the parties are referred to the same ranking as before the Tribunal:

The petitioners 1 and 2 who are the parents of one Vishal, minor aged about 3 years have filed the above claim petition seeking compensation of a sum of Rs.15,00,000/- for the death caused to the said Vishal in a road accident involving the vehicle belonging to the 2nd respondent, driven by the 1st respondent and insured with the 3rd respondent/Insurance Company.

3. The 3rd respondent / appellant herein alone had contested the case by contending that there was no First Information Report filed against the two wheeler insured with the appellant/Insurance Company i.e., TN-39-AQ-8291 (TVS XL Super) belonging to the 2nd petitioner and that apart, the

accident had occurred only on account of rash and negligent driving by the 1st respondent herein of the vehicle bearing Reg.No.TN-39-AD-8177. The F.I.R., is also against this vehicle only. This vehicle belongs to the 2nd respondent. The Insurance Company had also taken a defence that the rider of both vehicles did not have an effective licence to drive the vehicle.

4. The Tribunal after considering the evidence on record which included the oral evidence of the 2nd respondent, Exs.P1 to P8 and the oral evidence of RW1 Askar Ali, held that since the insurance policy for the 4th respondent's vehicle was a comprehensive one, it would not only cover the owner, but also his legal heirs, therefore, the insured being the legal heir of the deceased passenger was entitled to maintain the claim petition. The Tribunal has held the 3rd respondent is liable to indemnify the petitioners 1 and 2. Ultimately, a compensation of Rs.1,54,000/- was arrived at. Challenging the same, the 3rd respondent/Insurance Company is before this Court.

5. The learned counsel for the 3rd respondent/Insurance Company would draw the attention of this Court to the F.I.R., which was given by the mother of the deceased child, the 1st respondent herein, the F.I.R., was lodged within minutes of the accident. In the said F.I.R., the complainant has stated that on 08.06.2013, at about 8.40 p.m., when she along with her two children were travelling in the TVS XL Super bearing Reg.No.TN-39-AQ-8291, another two wheeler bearing Reg.No.TN-39-AD-8177 coming in the opposite direction dashed against the petitioner's vehicle, as a result of which, the minor Vishal was thrown out of the vehicle. In the impact, the son of the petitioners/respondents 1 and 2 namely Vishal sustained grievous injuries and was rushed to Saran Hospital, from where he was later transferred to Government Hospital, Tiruppur. However, the said Vishal succumbed to the injuries within few hours of he was being admitted.

6. The 3rd respondent would draw the attention of this Court to the evidence of PW1 who would admit that the F.I.R., was not lodged against the rider of the vehicle bearing Reg.No.TN-39-AQ-8291(which is the vehicle of the petitioners and insured with the 3rd respondent). The

claimants had not impleaded the owner of motor cycle bearing Reg.No.TN-39-AQ-8291.

7. The learned counsel for the respondents 1 and 2 / claimants submitted that under Section 163 A of the Motor Vehicles Act, (herein after called the Act) the owner of the vehicle cannot be both a owner of the vehicle as well as the claimant.

8. In the instant case, the complaint is against the driver of the vehicle bearing Reg.No.TN-39-AD-8177. The 2nd respondent is the owner and the 1st respondent is the driver of the said vehicle at the time of the accident, the claim petition has been filed without impleading the owner of the vehicle bearing Reg.No.TN-39-AQ-8291 only the insurance company has been impleaded. The claim petition filed is therefore not maintainable. In this regard, the learned counsel for the appellant also relied on the judgment of this Court in C.M.A.No.2638 of 2019 dated 04.03.2022.

9. Per contra, the learned counsel appearing for the petitioners would submit that insofar as the petitioners are concerned, they are third parties to the Insurance and they cannot be denied the compensation.

10. The above argument has to be rejected since the petitioners have not impleaded the owner of the vehicle bearing Reg.No.TN-39-AD-8177, the petitioners cannot seek compensation only from the insurance company without impleading the owner. It is needless to state that the claimants in order to claim compensation from the Insurance Company has to necessarily implead the owner of the insured vehicle. In the instant case, the owner of the vehicle is shown as the 2nd petitioner and therefore, he cannot seek to play a dual role of both the petitioner and owner of the vehicle particularly when he is the tort-feasor.

11. In the result, the Cross objection filed by the claimants in Cross Objection No.50 of 2019 is dismissed and the appeal filed by the Insurance Company in C.M.A.No.2167 of 2017 is allowed and the Order and Decreetal order made in M.C.O.P.No.1675 of 2013 dated 21.11.2016 on

the file of the Motor Accident Claims Tribunal (I-Additional District Court), Tiruppur is set aside. No costs.

30.09.2022

Index : Yes/No
Speaking / Non-speaking order
ssn

To:

1. The Motor Accident Claims Tribunal,
I Additional District Court,
Tiruppur.

2. The Section Officer,
V.R.Section,
High Court of Madras,
Chennai.

P.T.ASHA, J.,

ssn

C.M.A.No.2167 of 2017
and
Cros.Obj.No.50 of 2019

30.09.2022