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CMA.No.3386 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.06.2022

CORAM

THE HONOURABLE MS. JUSTICE P.T.ASHA

CMA.No.3386 of 2017

1.K.Ganeswari

2.D.Kamaraj

... Appellants/Petitioners

Vs

1. R.Baskar

2. ICICI Lombard Gen Ins Company Limited,
Chotah Bhai Centre, 2nd Floor,
No.140, Nungambakam High Road,
Chennai - 34.

... Respondents/Respondents

PRAYER: Appeal filed under Section 173 of the Motor Vehicles Act, 1988, for enhancement of compensation against the Judgment and Decree dated 13.09.2017 in M.C.O.P.No.1135 of 2015 on the file of the Motor Accident Claims Tribunal, Chief Judge, Small Causes Court, Chennai.

For Petitioners : M/s. Ramya V.Rao

For Respondents : M/s. R.Sree Vidhya [R.2]

Not ready in notice [R.1]

JUDGEMENT



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The petitioners whose claim petition in M.C.O.P.No.1135 of 2015 has been dismissed by the Motor Accident Claims Tribunal (Chief Judge, Small Causes Court) Chennai, is the appellant before this Court. The facts in brief are as follows:-

2. The claim petition had been filed invoking Section 163-A of the Motor Vehicle Acts, seeking compensation of a sum of Rs.10,00,000/- for the death of the son of the appellants herein in a road traffic accident. It is the case of the appellants that on 06.12.2014 at about 16:20 hours when the deceased was riding his motor cycle at Thiruvallur Periyakuppam, Railway Over bridge and proceedings towards Chennai, he had hit the centre median thereby sustaining grievous injuries all over his body and ultimately succumbed to the said injuries.

3. The 2nd respondent / insurance company had filed a counter statement in which they had denied their liability on the ground that the deceased being the tortfeasor himself cannot maintain the claim petition. The 2nd respondent/insurance company had sought leave of the Court to raise all defenses under Section 170 of the Motor Vehicle Act. Ultimately, by an



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award dated 13.09.2017, the Chief Judge, Small Causes Court, Chennai, dismissed the M.C.O.P.No.1135 of 2015. The learned Judge held that it was only the deceased who was responsible for the accident and there was no third person intervention, therefore, the tortfeasor was not entitled to compensation. Challenging the same the appellants are before this Court.

4. The learned counsel appearing on behalf of the appellant would contend that the Motor Vehicle Act is a beneficial legislation and that the appellants had lost their son who was just 19 years of age at the time of the accident.

5. Per contra, Mrs. R.Sree Vidhya, learned counsel for the insurance company would submit that the fact of this case is squarely covered by the Judgment of this Court dated 04.03.2022 reported in ***C.M.A.No.2638 of 2013 - The Divisional Manager, TATA AIG General Insurance Company Limited Vs. A.C.Jagadeesann and others.***

6. Heard both the learned counsels.

7. Admittedly, the accident had been caused by the deceased himself



and no third person was involved in the same. The narration would show that the accident had occurred when the deceased had hit the centre median.

In the judgment supra cited by the learned counsel for the respondent/insurance company this Court has held as follows:-

"36. The scheme of the Act contemplates 4 players - the victim, the driver of the offending vehicle, owner of the offending vehicle and lastly, its insurer. In any accident which results in any damage to person or property the person who is primarily at fault is the driver of the vehicle that caused the accident. Once, the fault is fixed on the driver, the owner of the vehicle becomes vicariously liable. At times the owner and the driver may be the same person. Thereafter, if the vehicle possesses a valid insurance then the insurer is bound to indemnify the owner of the vehicle. Therefore, considering the object of the Act and the judicial pronouncements, it is clear that a person claiming compensation under the "No Fault Liability" has to first establish a third party involvement in the mishap. The Judgment in United India Insurance Company Limited v. Sunilkumar and another, [AIR 2017 SC 5710], only emphasis that the Insurer cannot set up the defence of negligence, it has not done away with the primary proof that the accident involved a third party intervention / involvement"



"38. In Ramkhiladi and another v. The United India Insurance Company and another [2020 (2) SCC 550], the Tribunal had relied upon the principle that in a claim under Section 163A the claimant was not required to plead or establish negligence. The High Court had overturned this finding and held that the application under Section 163A of the Act against the Insurance Company of the vehicle driven by the deceased himself is liable to be dismissed. This was the subject matter of challenge before the Hon'ble Supreme Court. The learned Judge explained the principle and the purport of a claim under section 163A in Para 5.5 which is extracted hereinbelow:-

"5.5 It is true that, in a claim under Section 163A 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 163A 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 163A



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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 163A of the Act against the owner and insurer of the vehicle bearing registration No. RJ 02 SA 7811." "

8. Therefore, in the light of the provisions of the Act and the Judgment of the Hon'ble Supreme Court referred to in the Judgment above I see no reason to set aside the award of the Tribunal below and consequently, the Civil Miscellaneous Appeal is dismissed. No costs.

15.06.2022

Index : Yes/No
Internet: Yes/No
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To

1. The Motor Accident Claims Tribunal,
Chief Judge, Small Causes Court, Chennai.
2. The Section Officer,
V.R. Section,
High Court, Madras.



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P.T. ASHA, J.

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