BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 14.09.2022

Pronounced On : 07.11.2022

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

C.M.A(MD)No.419 of 2021
and
C.M.P.(MD)No.3740 of 2021

1.The Branch Manager,
United India Insurance Company Limited,
II Floor, Xavier Building,
Assisi Campus,
P.W.D.Office Road,
Nagercoil, Nagercoil & Village,
Agastheeswaram Taluk,
Kanyakumari District. : 1st Appellant / 2nd Respondent

2.The Branch Manager,
United India Insurance Company Limited,
6-1, Door No.48-A-9,
Leela Balan Complex, 1st floor,
Vivekananthapuram,
Kanyakumari - 629 702,
Kanyakumari Village,
Agastheeswaram Taluk,
Kanyakumari District. : 2nd Appellant / 3rd Respondent

Vs.

1.Ganesapathi : 1st Respondent/ Petitioner

2.Rajasekhar : 2nd Respondent/1st Respondent

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the judgment and decree, dated 27.02.2019 passed in M.C.O.P.No.44 of 2016 on the file of the Motor Accident Claims Tribunal/ I Additional Sub Court, Nagercoil.

For Appellants : Mr.I.Suthakaran

For Respondents : Mr.D.Senthil Kumar,
for Caveator, R1.

: No Appearance, for R2.

J U D G M E N T

The Civil Miscellaneous Appeal has been filed under Section 173 of Motor Vehicle Act, 1988, challenging the award, dated 27.02.2019, in M.C.O.P.No.44 of 2016 on the file of the Motor Accident Claims Tribunal/ I Additional Sub Court, Nagercoil.

2.The case of the claimant is that on 19.04.2016 at about 05.00 pm, when the claimant was driving his passenger Auto Rickshaw bearing Registration No.TN-74-R-2845, carrying passengers from Kanyakumari to Nagercoil and while the Auto Rickshaw was plying in the Kanyakumari -Nagercoil NH Road near Pottaiyadi at Thanulingam Nadar Memorial Turning, one Maruti Alto Car bearing Registration No.TN-74-R-9027, which came in the opposite direction in a rash and negligent manner, dashed against the Auto Rickshaw and as a result of which, the claimant and the passengers sustained multiple injuries, that on the basis of the complaint lodged, FIR came to be registered in Crime No.169 of 2016 for the offences punishable under Sections 279, 337, 338 IPC, on the file of the South Thamaraikulam Police Station and that after completing the investigation, charge sheet has been filed against the Maruti Alto Car driver and the case is now pending on the file of the Court of the Judicial Magistrate Court No.III, Nagercoil.

3.Admittedly, the claimant is the owner of Auto Rickshaw and the same is insured with the second appellant/third respondent. The second respondent/first respondent is the owner of the Maruti Alto Car bearing

Registration No.TN-74-R-9027 and the same is insured with the first appellant/second respondent.

4.The second respondent herein, who is the owner of the Maruti Alto, had remained ex-parte before the Tribunal and despite the receipt of notice, he has not turned up before this Court.

5.The first appellant/second respondent has filed the counter statement stating that the Maruti Alto bearing Registration No.TN-74-R-9027 was involved in the accident, but, the said vehicle was not insured with their company at the material time of accident i.e., on 19.04.2016; that they have issued a policy to the said vehicle for the period from 21.04.2016 to 20.04.2017 and that since there was no policy coverage at the time of accident, the second respondent is not liable for the claim.

6.It is pertinent to note that the first appellant/second respondent has neither disputed the accident nor the manner of accident.

7.The claimant as P.W.1 in his evidence would depose about the manner of accident and the way in which, Maruti Alto Car had caused the accident. According to P.W.1, the Maruti Alto driver came in the opposite direction in a rash and negligent manner and without sounding horn, had dashed against the Auto Rickshaw and as a result of which, the driver and the inmates of Auto Rickshaw had sustained injuries.

8.As rightly contended by the learned counsel for the first respondent, the evidence of P.W.1 regarding the manner of accident was not at all shaken during his cross examination. Admittedly, FIR came to be registered against the Maruti Alto Car driver and subsequently, charge sheet has also been laid against him.

9.Considering the above, the finding of the Tribunal that the accident was occurred only due to the rash and negligent driving of the Maruti Alto Car, cannot be found fault with.

10.As already pointed out, the specific defence of the first appellant/second respondent is that the Maruti Alto Car was not possessing insurance cover at the time of accident. But subsequently, policy was issued for the period between 21.04.2016 to 20.04.2017. It is evident from Ex.R.4/Insurance Policy that the Maruti Alto Car owned by the second respondent herein, was insured with the first appellant/second respondent for the period between 21.04.2016 to 20.04.2017 and as such, there was no policy coverage on 19.04.2016, the date of accident.

11.Considering the above, the finding of the Tribunal that since there was no policy coverage at the time of accident, the first appellant is not liable, cannot be found fault with.

12.As rightly contended by the learned counsel for the appellants, the Tribunal, after coming to decision that the second respondent insurer is not liable, then consequently liability should have been fastened on the owner of the vehicle, i.e., the second respondent/first respondent, but the Tribunal has not proceeded in that direction. On the other hand, considering the fact that the Auto Rickshaw was possessing valid insurance cover at the time of accident, invoked personal accident coverage, mulcted liability on the second appellant/third respondent insurer.

13.No doubt, in a similar case, the Hon'ble Supreme Court in **Ram Khiladi vs United India Insurance Company** reported in 2020 (2) SCC 550, has held that the injured claimant or the legal heirs of the deceased can invoke personal accident coverage and claim the compensation and the relevant passage is extracted hereunder:

> *"A.Motor Vehicles Act, 1988 -Ss.163-A and 147 - Claim petition under S.163-A, held, not maintainable by borrower/permissive user of vehicle against owner and/or insurer of said vehicle, as such borrower/permissive user steps into shoes of owner, and owner cannot both be claimant and recipient*
>
> *In a claim under S.163-A, deceased/victim has to be a third party in relation to vehicle in question - Mere own-use of motor vehicle by owner/borrower/permissive user does not entitle such person(s) to maintain S. 163-A petition against insurer of their own/borrowed vehicle - Owner/borrower/ permissive users are not "third parties" in relation to their own/borrower/ vehicle and hence are not covered by statutory insurance under S.147-*
>
> *Thus, claim of owner/borrower/permissive user would be limited to personal accident coverage re own-use of the vehicle, if any, strictly as per contract of insurance covering the borrowed vehicle.*
>
> *Fact that S.163-A claim is based on no-fault liability principle only means that fault or negligence or wrongful act,*

neglect or default of driver/owner of offending vehicle does not need to be established for award of compensation under S. 163-A/Sch.II - This does not mean that it is unnecessary to even file S.163-A petition against driver/owner/insurer of offending vehicle which caused the accident.

9.5. 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 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. 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 the case of Dhanraj (supra), 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 authorized 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."*

14.Considering the legal position above referred, the decision of the Tribunal invoking personal accident coverage, cannot be found fault with. But at the same time, PA coverage can be made applicable to the death or total permanent disablement. But as per the decision of this Court in ***Bajaj Allaianz General Insurance Co.Ltd. vs C.Ramesh*** reported in ***2013(1) TN MAC 325,*** the same can be extended to all kinds of disabilities. In the case on hand, though the petitioner has suffered some grievous injuries, it is not the case of the claimant that he had sustained any disability. The claimant has not produced the disability certificate, but the Tribunal by calculating the amounts towards pain and suffering, extra nourishment, transport expenses, loss of income and medical expenses, arrived at Rs.98,320/-. Since the claimant has not sustained any disability, the question of invoking personal accident coverage does not arise at all.

15.Now turning to the original claim, as already pointed out, the Tribunal has not mulcted liability on the second respondent/owner. The Tribunal has not offered any reason or explanation for not awarding against the owner of the Maruti Alto Car.

16.As already pointed out, the claimant has suffered four injuries out of which, one is grievous injury and others are simple in nature. It is also not in dispute that the claimant had taken in-patient treatment for three days between 19.04.2016 to 21.04.2016.

17.Considering the nature of the injuries and consequent pain and suffering and discomfort and the loss of income for the treatment period and taking note of the expenses towards extra nourishment and transportation, this Court is inclined to award a lump sum compensation of Rs.50,000/- to the claimant and in addition to that, as per Ex.P.8 Medical Receipts, the claimant is also entitled to get Rs.18,616/- totally at Rs.68,616/-. Hence, this Court concludes that the claimant is entitled to get total compensation of Rs.68,616/- and the same is payable by the second respondent herein/owner of the Maruti Alto Car and the above points are answered accordingly.

18.In the result, the Civil Miscellaneous Appeal is allowed and the award, directing the second appellant to pay Rs.98,320/- to the claimant is set aside and the second respondent/owner of the Maruti Alto Car is directed to pay Rs.68,616/- with interest at 7.5% per annum from the date of petition till the date of payment, excluding the default period, if any, within a period of two months from the date of receipt of copy of this judgment and on such deposit, the claimant is permitted to withdraw the entire amount with interest and costs. Consequently, connected Miscellaneous Petition is closed. No costs.

07.11.2022

Index : Yes : No
Internet : Yes : No
das

To

1.The Motor Accident Claims Tribunal
and I Additional Sub Court, Nagercoil.

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

K.MURALI SHANKAR,J.

das

C.M.A(MD)No.419 of 2021
and
C.M.P.(MD)No.3740 of 2021

07.11.2022