IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.10.2023

CORAM :

THE HONOURABLE MR. JUSTICE **M. DHANDAPANI**

C.M.A.No.1811 of 2011
and
Cros.Obj.No.24 of 2023
and
M.P.No.1 of 2011

C.M.A.No.1811 of 2011

M/s.Bajaj Allianz General Insurance Co. Ltd.,
Functioning at
D.No.11, Office No.6-A), People's Park,
3rd Floor, Government Arts College Road,
Coimbatore – 641 018. ... Appellant / 2nd Respondent

Vs.

1.Govindaraj ... 1st Respondent / Petitioner

2.M.Sampathkumar ... 2nd Respondent / 1st Respondent
[2nd respondent *ex-parte* in Lower Court
and hence notice may be dispensed with]

Cros.Obj.No.24 of 2023
in C.M.A.No.1811 of 2011

Govindaraj ... Cross Objector

Vs.

1.M.Sampathkumar

2.M/s.Bajaj Allianz General Insurance Co. Ltd.,
D.No.11, Office No.6-A), People's Park,
3rd Floor, Government Arts College Road,
Coimbatore – 641 018. ... Respondents

Prayer in C.M.A: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree in M.C.O.P.No.323 of 2009 dated 28.12.2010 on the file of the Motor Accidents Claims Tribunal, Chief Judicial Magistrate Court, Namakkal.

Prayer in Cross Objection : Cross Objection filed under Order 41 Rule 22 of the Civil Procedure Code to enhance the award dated 28.12.2010 in M.C.O.P.No.323 of 2009 on the file of Motor Accident Claims Tribunal and Chief Judicial Magistrate Court, Namakkal.

C.M.A.No.1811 of 2011

For Appellant : Mr.E.Rajadurai
for M/s.M.B.Gopalan Associates

For Respondents : Mr.S.Sankar [R1]
Ex-parte [R2]

Cros.Obj.No.24 of 2023

For Cross Objector : Mr.S.Sankar

For Respondents : *Ex-parte* [R1]
Mr.E.Rajadurai
for M/s.M.B.Gopalan Associates [R2]

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COMMON JUDGEMENT

Challenging the award passed by the Motor Accidents Claims Tribunal, Chief Judicial Magistrate Court, Namakkal in M.C.O.P.No.64 of 2008 dated 28.12.2010, the appellant has preferred the above appeal.

2. The Cross Objection has been filed by the claimant seeking an enhancement of the compensation.

3. The facts in brief are as follows :-

On 07.03.2007 at about 00.30 hrs at Alanganatham Pirivu Road, near Bridge, the petitioner was riding the motorcycle bearing Reg.No.TN-33-A-5893, owned by the first respondent, along with one V.Govindaraj as pillion rider, at that time, an unidentified lorry hit the motorcycle, due to which, the petitioner sustained grievous injuries all over his body. Thereafter, he filed a claim petition claiming a sum of Rs.10,00,000/- for the injuries sustained by him.

4. The second respondent in C.M.A.No.1811 of 2011 remained *ex-parte* before the Tribunal. Before the Tribunal, the claimant examined four witnesses viz., P.W.1 to P.W.4 and marked 13 documents viz., Ex.P.1 to Ex.P.13. On the side of the respondents, they have examined one witness viz., R.W.1 and marked one document viz., Ex.R.1. After adjudication, the Tribunal had partly allowed the petition and awarded a sum of Rs.7,92,000/- as compensation under various heads. The second respondent/Insurance

Company and the owner of the motorcycle were directed jointly and severally to pay the compensation to the claimant. Aggrieved by the said order, the Insurance Company has preferred the appeal and the claimant has filed the cross objection seeking enhancement.

5. The learned counsel appearing for the appellant submitted that the first respondent is the rider of the motorcycle and without the permission of the owner of the motorcycle, he had driven the motorcycle in a rash and negligent manner and dashed against the unknown lorry, thereby both the first respondent and the pillion rider sustained grievous injuries and filed claim petition under Section 163A of the Motor Vehicles Act, 1988 (in short 'the Act'). If the tort-feasor had driven the motorcycle without valid driving licence, which was the cause of the accident, he is not entitled for any compensation, but he is entitled to compensation only under the Personal Accident coverage. In the present case, the personal accident coverage is not provided in the insurance policy. Hence, he is not entitled to compensation as a third party. In support of his contention, he relied upon the decision of the Apex Court in the case of ***Ramkhiladi and Ors Vs. The United India Insurance Company and Ors.*** reported in ***MANU/SC/0008/2020***.

6. Per contra, the learned counsel appearing for the first respondent submitted that the first respondent/claimant does not possess valid driving licence at the time of accident, however, the second respondent/owner of the motorcycle, authorized the first respondent to drive the motorcycle, during which, the accident had happened. He also submitted that there is no fault on the part of the first respondent, thereby the Tribunal had passed an award in favour of the first respondent, which cannot be interfered with. Accordingly, he prays for dismissal of the appeal and allowing the cross objection.

7. Heard the learned counsel appearing for the appellant and the learned counsel appearing on behalf of the cross objector and perused the materials available on record.

8. The issue arises in the present appeal is whether the first respondent is entitled to claim any compensation as against the owner of the motorcycle and the insurer under Section 163(A) of the Act or not?

9. The issue arises in the appeal is no more *res-integra* and the same was decided by the Apex Court in the case of ***Ramkhiladi and Ors Vs. The United India Insurance Company and Ors*** and the relevant portion of the above decision is as follows :

> ***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 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.*

5.6. *In view of the above and for the reasons stated above, in the present case, as the claim Under Section 163A of the Act was made only against the owner and insurance company of the vehicle which was being driven by the deceased himself as borrower of the vehicle from the owner of the vehicle and he would be in the shoes of the owner, the High Court has rightly observed and held that such a claim was not maintainable and the claimants ought to have joined and/or ought to have made the claim Under Section 163A of the Act against the driver, owner and/or the insurance company of the offending vehicle i.e. RJ 29 2M 9223 being a third party to the said vehicle.*

5.7. *Now, so far as the reliance placed upon by the learned Advocate for the claimants on the decision of this Court in the case of* ***Naveen Kumar*** *(supra), on considering the issue involved in that decision, we are of the opinion that the said decision shall not be applicable to the facts of the case on hand and/or the same shall not be of any assistance to the claimants. In that case, the issue was as to who could be said to be the registered owner of the vehicle and the liability of the owner who sold the vehicle, but his name continued to be as the owner with the registering authority. To that, it was held that the person in whose name the motor vehicle stands registered is the owner of the vehicle for the purpose of the Act.*

5.8. *However, at the same time, even as per the contract of insurance, in case of personal accident the owner-driver is entitled to a sum of Rs. 1 lakh. Therefore, the deceased, as observed hereinabove, who would be in the shoes of the owner shall be entitled to a sum of Rs. 1 lakh, even as per the contract of insurance. However, it is the case on behalf of the original claimants that there is an amendment to the 2nd Schedule and a fixed amount of Rs. 5 lakh has been specified in case of death and therefore the claimants shall be entitled to Rs. 5 lakh. The same cannot be accepted. In the present case, the accident took place in the year 2006 and even the judgment and Award was passed by the learned Tribunal in the year 2009, and the impugned judgment and Order has been passed by the High Court in 10.05.2018, i.e. much prior to the amendment in the 2nd Schedule. In the facts and circumstance of the present* *case, the claimants shall not be entitled to the benefit of the amendment to the 2nd Schedule. At the same time, as observed hereinabove, the claimants shall be entitled to Rs. 1 lakh as per the terms of the contract of insurance, the driver being in the shoes of the owner of the vehicle.*

10. A perusal of the above decision makes it clear that in a claim under Section 163A of the Act, there is no need for the claimant 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.

11. Under the contract of insurance, the insurer is liable to cover 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. It is held by the Apex Court that the claim was not maintainable and the

claimant ought to have made a claim under Section 163A of the Act against the owner and insurer of the offending vehicle being a third party to the vehicle. In the present case, it is alleged by the claimant that an unknown lorry came from the opposite direction in a rash and negligent manner and dashed against the claimant. If it is so, the claimant has to raise claim only against the offending vehicle and not against the second respondent vehicle. Hence, by applying the ratio laid down by the Apex Court in *Ramkhiladi case*, the claim petition of the claimant is not maintainable and the award of the Tribunal is liable to be set aside.

12. Accordingly, the award passed by the Motor Accidents Claims Tribunal, Chief Judicial Magistrate Court, Namakkal in M.C.O.P.No.323 of 2009 dated 28.12.2010 is set aside.

13. In the result, the civil miscellaneous appeal is allowed and the cross objection is dismissed. Any amount, deposited by the appellant/insurance company to the credit of M.C.O.P.No.323 of 2009, the insurance company is at liberty to withdraw the same by filing appropriate application before the Tribunal and upon such application being filed, the Tribunal shall dispose of

the same in accordance with law forthwith. No costs. Consequently, the connected miscellaneous petition is closed.

05.10.2023

(2/2)

Index : Yes / No
Speaking order / Non-speaking order
Neutral Citation Case : Yes / No
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To

1.The Motor Accidents Claims Tribunal, Chief Judicial Magistrate Court, Namakkal.

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

M.DHANDAPANI, J.,

sp

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and
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