IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 26.09.2023

CORAM:

THE HONOURABLE Mrs.JUSTICE R.KALAIMATHI

C.M.A.No.1319 of 2012

The National Insurance Company Limited,
No.165, Nethaji Road,
Manjakuppam, Cuddalore. ... Appellant

vs.

1. B.Gomathi

2.Minor B.Bavatharani
(Represented by her mother
1st Respondent B.Gomathi)

3.K.Anandham

4.N.Kannan

5.K.Raju ... Respondents
(The 5th Respondent is already
set exparte before the trial Court)

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, against the judgment and decree dated 30.10.2010 made in M.C.O.P.No.705 of 2007 on the file of the Motor Accident Claims Tribunal / Principal District Judge, Cuddalore.

For Appellants : Mrs.Sree Vidhaya

For Respondents : No Appearance

JUDGMENT

Challenge is made against the Judgment and Decree passed in MCOP.No.705 of 2007 on the file of Motor Accident Claim Tribunal / Principal District Court, Cuddalore dated 30.10.2010 by the second respondent/Insurance company questioning the liability.

2. The claim petition was filed under Section 163(A) of the Motor Vehicles Act, 1988, claiming compensation of Rs.15 lakhs on the death of one Balu @ Balamurugan, husband of the first petitioner in the road traffic accident that occurred on 19.08.2006 at about 1.00 a.m, at Thirukovilur, involving a Lorry bearing registration No.TN.32/C 5413, which is owned by the first respondent and insured with the second respondent.

3. The Tribunal after hearing both sides and upon consideration of oral and documentary evidence held that the second respondent was liable to pay compensation of an amount of Rs.4,73,000/- with interest 6 % per annum from the date of petition payable by the second respondent.

4. On receipt of notice, the respondents did not either choose to appear nor represented through counsel.

5. The learned counsel appearing for the Appellant / Insurance company Mrs. R.Sree Vidya, would vehemently contend that at the time of the accident the deceased Balu was riding the motor vehicle which belongs to one K.Raju, enroute, he dashed against the road side telephone post and sustained serious injuries. Despite treatment for 3 days he succumbed to the accident injuries. It is the further arguments of the learned counsel for the Appellant that it was a self accident brought up by the deceased himself. The claimant filed the MCOP under Section 163(A) of the Motor Vehicles Act, on the premise that in an application under Section 163(A) of the Motor Vehicles Act, proof of death arisen out of the accident alone was sufficient irrespective of negligence. It is further contended that the deceased was a borrower of the first respondent's vehicle, he had therefore, stepped into the shoes of owner of the vehicle and not a third party. The policy issued by the appellant covers only the risk of third party and does not cover the risk of the deceased who had stepped into the shoes of the owner. She drew the attention of this Court, about the observations made

by the Apex Court in **RamKhiladi and another Vs. United India Insurance company and another reported in (2020) 2 SCC 550,** and prayed to allow the appeal by setting aside the judgment passed by the Trial Court.

6. Heard the arguments of the learned counsel appearing for the appellant and perused the materials available on record.

7. At Trial, the wife of the deceased Tmt. B.Komathi was examined as PW.1 and Thiru. Thirumalai was examined as PW.2. Exs.P.1 to P.5 were marked. On the respondent side, neither any oral evidence was let in nor any document was marked.

8. According to the claimant, on 19.08.2006 at about 1.00 a.m, while the deceased Balu @ Balamurugan was riding the motor vehicle, which belongs to the first respondent, bearing registration No.TN.32/C.5413 on the left side of the road along Tirukovilur road. A person suddenly crossed the road and in order to avoid the accident, he turned the vehicle which resulted in hitting against the road side telephone

post. Due to the said impact, he was thrown out from the motor cycle and sustained multiple fractures all over the body and succumbed to the injuries on 21.08.2006, which is not a dispute.

9. Pertinent question arises in this appeal is that, as the deceased stepped into the shoes of the owner, he be the tortfeasor for which he is not entitled to be compensated. Though it was resisted by the Insurance company by stating that the deceased was a tortfeasor, with death because of his own negligence. He cannot be equated with the victim of the accident, to enable the petitioners to seek any remedy even under Section 163(A) of the Motor Vehicles Act. There is no insurance cover for the driver other than the owner and the Insurance company cannot be fastened with any liability for the rash driving of the victim.

10. The Tribunal has passed the award for a sum of Rs.4,73,000/- fastening the liability on the second respondent against which the present appeal.

11. A perusal of the claim petition and the evidence of PW.1 it indicates the fact that the deceased while driving the motor vehicle of the first respondent due to his own negligence dashed on the telephone post and on account of the same suffered fatal injuries and succumbed to the same after few days. The law is well settled that the claim by tortfeasor against his insurer is absolutely not maintainable under Section 163(A) of the Motor Vehicles Act especially after the judgment of the Apex Court in Ningamma and another Vs United India Insurance Company reported in 2009 2 TNMAC 169 SC. In Oriental Insurance Company Vs Rajini Devi and others reported in 2008 5 SCC 736, the Apex Court categorically held that 163(A) of the Motor Vehicles Act cannot be set to have any application ir-respect of accident wherein, the owner of the motor vehicle himself is involved.

12. The Hon'ble Supreme Court in **Ram Khiladi and another Vs. The United India Insurance Company and another** reported in **2020 (1) CTC 443,** it has been held that,

> *"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 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 herein above, 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 police 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.

9.6. 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."*

13. In **Ram Khiladi and another Vs. The United India Insurance Company and another** as mentioned supra, the deceased driver was travelling in a borrowed vehicle and met with an accident with another vehicle. However, the Appellant/ Claimant claimed the compensation from the owner and the insurer borrowed vehicle under Section 163(A) of Motor Vehicles Act 1988. The Apex Court held that the deceased is a permissible user of borrowed vehicle. The claimants could have claimed the compensation under Section 163(A) against the owner and the Insurance company of the offending vehicle, the deceased being the third party with respect of offending vehicle. It was further held that the deceased driver cannot be said to be a third party with respect of the insured vehicle. The claimants are restricted to personal accidental cover strictly as per the terms of the insurance contractor covering the borrowed vehicle which is sum of Rs.1 lakh.

14. From the said details, the relevant details of the Insurance company policy has to be gone into. Insurance Policy is Ex.P.4 the premium schedule is extracted hereunder,

A.Own Damage Premium computation (Section 1) in Rs.	***II. Liability Premium Computation (Section II) in Rs.***
Basic Premium on	Basic Premium Including Premium for TPPD
Vehicle : 637.00	Vehicle : 160.00
Accessories : 0.00	CNG/LPG/Bi-Fuel Kit : 0.00
Electronic & Electrical Accessories :	Total : 160.00
Bi-Fuel Kit :	Add
Total :	a) PA Benefits : 50.00
Add Extras:	b) : 0.00
Geographical Extension :	Legal Liability : 0.00
For any other extra :	c) :
Sub Total :	d) :
Less Discounts	e) For any other extra :
For anti-theft devices :	Total Liability Premium (B) : 210.00
Any other discount :	Total Premium (A+B) : 847.00
NCB : 0.00	Add Service Tax : 0.00
Total Deductions : 0.0	
Net Own Damage Premium (A) : 637.00	Gross Premium : 933.00

15. In the premium schedule, an amount of Rs.50 is collected for the Personal Accident Benefits (PAB) and a liability clause is printed in the

policy as follows:

Limit of Liability:

Limit of the amount of the Company's liability under the Section II-I(i) in respect of any one accident as per M.V. Act, 1988. Limit of the amount of the Company's liability upto Rs.1,00,000/-. The contract of Insurance is governed by the terms of contract. The second respondent/Insurance company has received Rs.50 towards Personal Accident Benefits and limited liability is Rs.1,00,000/-.

16. Admittedly, the deceased is the permissible user, he gets into the shoes of his onwer. As per the terms of policy, the claimants are entitled for a sum of Rs.1,00,000/- with interest at 7.5% per annum from the date of claim petition.

17. In the result,

(i) The Civil Miscellaneous Appeal is partly allowed. No costs.

(ii) The compensation awarded by the Tribunal as per the terms of policy, the claimants are entitled to receive a sum of Rs.1,00,000/- with interest at 7.5% per annum from the date of claim petition.

(ii) The Insurance Company is directed to deposit the compensation amount i.e.,**Rs.1,00,000/-** together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit to the credit of M.C.O.P.No.705 of 2007 on the file before the Motor Accident Claims Tribunal / Principal District Judge, Cuddalore, within a period of eight weeks from the date of receipt of copy of this Judgment.

(iii) On such deposit being made, the respondents 1 and 2 namely, the wife and the minor daughter are entitled to receive a sum of Rs.30,000/- each and the respondents 3 and 4 namely, the father and mother of the deceased are entitled to received a sum of Rs.20,000/- each with proportionate interest. The respondents are at liberty to withdraw the same on filing of cheque petition. The Tribunal below shall disburse the enhanced amount upon production of the certified copy showing proof of payment of Court fee by the claimant.

26.09.2023

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

To:

1. The Motor Accident Claims Tribunal,
   Principal District Judge, Cuddalore.

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

R.KALAIMATHI, J.,

drl

C.M.A.No.1319 of 2012

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