IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 15.06.2023

PRONOUNCED ON: 14.07.2023

CORAM:

THE HONOURABLE MR.JUSTICE K.RAJASEKAR

Civil Miscellaneous Appeal No.2829 of 2015

Anguraj ... Appellant/Petitioner

Vs.

1. Anguraj
[R1 remained ex-parte before Tribunal.
Hence notice to R1 is dispensed with]

2. Bajaj Allianz General Insurance Co., Ltd.,
D.No.42, 1st Floor, SAR Complex,
Sathy Road, Erode … Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, as amended by Act 54 of 1994 praying to set aside the Judgment and decree dated 30.10.2013 made in M.C.O.P.No.54 of 2012 on the file of the Motor Accidents Claims Tribunal, Tiruchengode.

For Appellant	:	Mr. C.Kulanthaivel
For R1	:	Ex-Parte before Tribunal
For R2	:	Mr.K.Poomalai

JUDGMENT

The Civil Miscellaneous Appeal has been filed by the claimant to set aside the award passed in M.C.O.P.No.54 of 2012, dated 30.10.2013 on the file of the Motor Accidents Claims Tribunal, Tiruchengode, whereby, the Motor Accidents Claims Tribunal has dismissed the claim petition filed under Section 166 of the Motor Vehicles Act by the petitioner.

2. The parties are referred to hereunder according to status and ranking before the trial Court.

3. According to the claimant on 08.03.2012 at about 5.30 p.m., he was driving his two-wheeler bearing registration No.TN 34 P 2514 on Salem to Tiruchengode road, near Sempampalayam bus stop, at that time, an unknown vehicle came behind him very rash and negligent manner, and to avoid accident, he turned the vehicle in to the mud part of the road on the left side, lost control and fell down. He sustained severe grievous injuries and immediately he was admitted in to the Hospital. Thereafter, he has given a complaint for the above accident and a case in Crime No.75/2012 was registered by the Mallasamudram Police station under Sections 279, 373 and 337 IPC and the petitioner claimed compensation for a sum of Rs.5,00,000/- for the injuries sustained by him.

4. The Insurance Company of the two-wheeler belongs to him has been added as respondent No.2 and strangely he made himself as one of the respondents i.e., Respondent No.1 in the claim petition.

5. The Insurance Company filed their counter stating that the petitioner himself is the tort-feasor, and insurer of the two-wheeler and he is not entitled to claim insurance for his negligence act. The claimant has also stated that the accident was occurred due to the rash and negligent act of the unknown car but the owner of the car and the insurer of the car have not been made as a party in this petition. Hence, he prays to dismiss the petition.

6. Before the Tribunal, on the side of the petitioner examined P.W.1 to P.W.3 and 11 documents were marked as Exs.P1 to P11 and on the side of the respondent/Insurance Company, one official was examined as R.W.1 and two documents were marked as Ex.R1 and Ex.R2.

7. The Tribunal after considering the objection raised by the Insurance company that the tort-feasor is not entitled to claim compensation and the claimant is the insurer and he is the one who has to pay compensation to the injuries sustained by others and the Insurance Company

is only an indemnor for paying compensation if any, to be paid by the owner of the vehicle and prays to dismiss the claim.

8. The Tribunal has relied on two Judgements of this Court in ***Oriental Insurance Company Limited vs. Nithiyanantham and two others*** reported in ***2012 (1) TNMAC 387*** and ***National Insurance Company Limited vs. T.G.Parthasarathy and others*** reported in ***2013 (1) TNMAC 67*** held that non-joinder owner of the car and the Insurance Company is fatal and the petition is liable to be dismissed.

9. The learned counsel for the appellant submitted that even though, the petitioner is owner of the vehicle and he has suffered injuries and he is entitled for compensation under 163 A of the Motor Vehicles Act, he shall not be treated as a tort-feasor and the Claim Petition is maintainable since he has paid premium covering risk of owner-cum-driver.

10. The learned counsel for the Insurance Company would submit that the claimant is the tort-feasor, already the pillion rider has filed separate M.C.O.P.No.53 of 2012 on the file of the Motor Accidents Claims Tribunal, Tiruchengode, in which, this claimant is one of the respondents

wherein, compensation claimed by the injured pillion rider against the appellant herein and there is a finding given by the Tribunal that this claimant is also contributed to the negligence and 50% of liability has been fixed on him and he has not challenged the above finding. Hence prays to dismiss the appeal.

11. Admittedly, the petitioner's wife has lodged a complaint before the Mallasamudram police Station stating that the negligent act of this claimant has resulted in causing injuries to her and FIR-Ex.P1 was registered against him in Crime No.75/2012 on the file of the Mallasamudram Police Station. He has not recorded any protest for filing of the criminal case against him and in the other Claim Petition filed against him by his wife, he has remained ex-parte. After the specific finding given by the Tribunal in the Claim Petition in M.C.O.P.No.53 of 2012 filed by his wife that he is responsible for the accident and he has not come forward to challenge the above finding. He has chosen to file only one appeal eventhough he is held responsible for causing accident in both the Claim Petitions i.e., M.C.O.P.No.53 of 2012 and M.C.O.P.No.54 of 2012.

12. The claimant in his evidence deposed that, on 08.03.2012 at about 5.30 p.m., he was riding his scooter bearing registration No.TN 34 P 2514, on Salem to Tiruchengode road, suddenly a car came very close to hit on his vehicle hence, he turned the vehicle to avoid accident and fell down, resulting injuries to him. This evidence shows that, he himself sustained injuries while suddenly turning the vehicle, now he is seeking compensation from his own indemnor. The contract of indemnity/Insurance between the claimant and Insurance company is to indemnify the third parties. If any personal coverage is made for owner/third party only personal coverage of insurance alone to be payable by the Insurer. But the claimant has invoked Section 166 of the Motor Vehicles Act for compensation, which is not applicable to the case of the claimant herein since compensation under Section 166 of Motor Vehicles Act is based on fault liability. Since the claimant is a tort-feasor, he is not entitled to claim compensation from the Insurance Company under Section 163-A of the Motor Vehicles Act.

13. The Hon'ble Apex Court in ***Ramkhiladi and Another vs. United India Insurance Company and Another*** reported in ***2020 (20 SCC 550***, in paragraph No.9.9 the Hon'ble Apex Court has reiterated that, tort-feasor is not entitled to claim compensation even under "No fault liability"

under Section 163-A of the Motor Vehicles Act. Accordingly, this Court is not inclined to award compensation to the claimant herein. In Paragraph No.9.9 reads as follows:

> ***"9.9.*** *Now, so far as the submission made on behalf of the claimants that in a claim under Section 163-A of the Act mere use of the vehicle is enough and despite the compensation claimed by the heirs of the owner of the motorcycle which was involved in the accident resulting in his death, the claim under Section 163-A of the Act would be maintainable is concerned, in view of the decision of this Court in Rajni Devi [Oriental Insurance Co. Ltd. v. Rajni Devi, (2008) 5 SCC 736 : (2008) 3 SCC (Cri) 67] , the aforesaid cannot be accepted. In Rajni Devi [Oriental Insurance Co. Ltd. v. Rajni Devi, (2008) 5 SCC 736 : (2008) 3 SCC (Cri) 67] , it has been specifically observed and held that the provisions of Section 163-A of the Act cannot be said to have any application with regard to an accident wherein the owner of the motor vehicle himself is involved. After considering the decisions of this Court in Oriental Insurance Co. Ltd. v. Jhuma Saha [Oriental Insurance Co. Ltd. v. Jhuma Saha, (2007) 9 SCC 263:(2007) 3 SCC (Cri) 443]; Dhanraj[Dhanraj v. New India Assurance Co. Ltd., (2004) 8 SCC 553 : 2005 SCC (Cri) 363]; National Insurance Co. Ltd. v. Laxmi Narain Dhut [National Insurance Co. Ltd. v. Laxmi Narain Dhut, (2007) 3 SCC 700 : (2007) 2 SCC (Cri) 142] and Premkumari v. Prahlad Dev [Premkumari v. Prahlad Dev, (2008) 3 SCC 193 : (2008) 1 SCC (Civ) 822 : (2008) 1 SCC (Cri) 694] , it is ultimately concluded by this Court that the liability under Section 163-A of the Act is on the owner of the vehicle as a person cannot be both, a claimant as also a recipient and, therefore, the heirs of the owner could not have maintained the claim in terms of Section 163-A of the Act. It is further*

observed that, for the said purpose, only the terms of the contract of insurance could be taken recourse to. In the recent decision of this Court in Ashalata Bhowmik [National Insurance Co. Ltd. v. Ashalata Bhowmik, (2018) 9 SCC 801 : (2018) 4 SCC (Civ) 595 : (2019) 1 SCC (Cri) 399] , it is specifically held by this Court that the parties shall be governed by the terms and conditions of the contract of insurance. Therefore, as per the contract of insurance, the insurance company shall be liable to pay the compensation to a third party and not to the owner, except to the extent of Rs 1 lakh as observed herein above."

14. As observed by the Hon'ble Apex Court supra admittedly, the claimant herein has paid premium as a personal coverage for the owner and as per the policy, personal coverage of Rs.1,00,000/- is agreed to be compensated by the Insurance Company and this accident has occurred without the intervention of the third party and it is his case that to avoid accident, he swiftly change the course of vehicle, which resulted in accident and he suffered injuries thereon. The claimant has incurred medical expenses for a sum of Rs.2,75,000/- and he has claimed compensation under various heads since the petitioner is entitled to only personal coverage to the maximum limit of Rs.1,00,000/-, this Court is of the view that the claimant is entitled for personal coverage of Rs.1,00,000/- [Rupees One Lakh Only].

15. In the result, the Civil Miscellaneous Appeal is allowed. and the compensation awarded by this Court for a sum of Rs.1,00,000/-

[Rupees One Lakh only] together with interest at the rate of 7.5% per annum from the date of Claim Petition till the date of deposit. The second respondent/Insurance Company is directed to deposit the award amount, i.e., Rs.1,00,000/- within a period of six weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P.No.54 of 2012, on the file of the Motor Accidents Claims Tribunal, Tiruchengode. On such deposit, the appellant/claimant is entitled to withdraw the amount along with interest and costs. The Tribunal shall disburse the amount now awarded by this Court by directly giving credit to the Savings Bank Account of the claimant without any proper application. There shall be no order as to costs.

14.07.2023
(2/2)

ssi
Index:Yes/No
Speaking Order:Yes/No
Neutral Citation Case: Yes/No

To:

1. The Motor Accidents Claims Tribunal,
   Tiruchengode.

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

K.RAJASEKAR,J.

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Pre delivery Judgment made in
C.M.A.No.2829 of 2015

14.07.2023
(2/2)