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C.M.A.No.2612 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.11.2023

CORAM :

THE HONOURABLE MR. JUSTICE M. DHANDAPANI

C.M.A.No.2612 of 2019

and

C.M.P.No.12648 of 2019

United India Insurance Co. Ltd.,
No.44, GST Road, Guindy,
Chennai – 600 032.

... Appellant

Vs.

1.K.Kumar
2.Padmavathy
3.P.Loganathan

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgement and Decree of the Motor Accident Claims Tribunal – Chennai, Chief Judge, Court of Small Causes, Chennai in M.C.O.P.No.4321 of 2015 dated 07.09.2018.

For Appellant : M/s.R.Vijaya Kamala

For Respondents : Mr.S.Parthasarathi [R1 & R2]
Exparte [R3]

JUDGEMENT



C.M.A.No.2612 of 2019

Challenging the award passed by the Motor Accident Claims Tribunal,

Chief Judge, Court of Small Cause, Chennai in M.C.O.P.No.4321 of 2015 dated 07.09.2018, the appellant has preferred the above appeal.

2. The petitioners are the parents of the deceased K.Ravikumar. On 01.02.2009 at about 6.30 p.m., the deceased was riding a motorcycle bearing Regn.No.TN-05-X-6823 from Periyar Nagar to Vyasarpadi. He drove the vehicle at a dangerous speed and dashed against the center median and died on the spot. Thereafter, the claimants filed a claim petition claiming a sum of Rs.20,00,000/- as compensation under various heads for the death of the deceased.

3. Before the Tribunal, the claimants examined one witness viz., P.W.1 and marked 10 documents viz., Ex.P.1 to Ex.P.10. On the side of the respondents, they have examined one witness viz., R.W.1 and marked 3 documents viz., Ex.R.1 to Ex.R.3. After adjudication, the Tribunal passed an award awarding a sum of Rs.1,00,000/- as compensation in favour of the claimants. Challenging the same, the insurance company is before this Court by way of the present appeal.



4. The learned counsel appearing for the appellant/insurance company submitted that, the respondents 1 and 2 claims that as per policy, the appellant/insurance company is liable to pay compensation to the respondents 1 and 2 and filed a claim petition u/s 166 of the MV Act claiming compensation, which is not sustainable. If the respondents 1 and 2 filed claim petition u/s 163A of the MV Act and as per the decision rendered by the Apex Court in the case of ***Ramkhiladi and Ors Vs. The United India Insurance Company and Ors.*** and ***Ningamma & Anr. Vs. United India Insurance Co. Ltd.,*** reported in ***2020 (1) CTC 443*** and ***2009 (2) TN MAC 169***, wherein the Apex Court held that if the deceased is not owner of the motorcycle and if he borrowed the motorcycle from the real owner, the deceased cannot be held to be an employee or owner of the motorcycle although he was an authorised driver of the motorcycle. Section 163A of the Act clearly states that the liability to pay the compensation upon the owner of the vehicle, the owner cannot both be a claimant and a tort-feasor, therefore, the legal representatives of the deceased, who had steps into the shoes of the owner of the motorcycle would not claim compensation u/s the 163A of the Act. In view of the above categorical decision rendered by the Apex Court, which was followed by the learned single judge of this Court in the case reported in ***2020 (1) TN MAC 593***, the award passed by the Tribunal necessarily has to be set aside. Accordingly, he prays for allowing the appeal.



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5. The learned counsel appearing for the respondents 1 and 2 submitted that the motorcycle owned by the third respondent, which was driven by the deceased and dashed against the center median and lost his life. As per the policy, the driver and owner is entitled to claim personal accident coverage of Rs.1,00,000/- and rightly appreciating the said fact, the Tribunal had awarded a sum of Rs.1,00,000/-, which is wholly sustainable and the same does not require any interference. Accordingly, he prays for dismissal of the appeal.

6. Heard the learned counsel for the appellant and the learned counsel appearing for the respondents 1 and 2 and also perused the materials available on record.

7. Admittedly, the respondents 1 and 2 are the dependants of the deceased and the deceased driven the motorcycle and dashed against the center median and thereby, he lost his life. Thereafter, the respondents 1 and 2 filed claim petition before the Tribunal and the Tribunal has passed the award in favour of the respondents 1 and 2.

8. The issue arises in the present appeal is whether the respondents 1 and



2/legal representatives of the deceased are entitled to step into the shoes of the owner for claiming compensation u/s 166 of MV Act.

9. As per Section 166 of MV Act, only third party alone is entitled to claim compensation before the Tribunal. In the present case, the deceased is not a third party and he is a tort-feasor, since he driven the motorcycle and lost his life. However, the respondents 1 and 2 are entitled to claim compensation only u/s 163A of MV Act and even u/s 163A of MV Act, if the legal representatives of the deceased had stepped into the shoes of the owner of the vehicle, they cannot claim compensation u/s 163A of MV Act. The Apex Court has elaborately considered the very same aspect in the case of ***Ningamma & Anr. Vs. United India Insurance Co. Ltd.***, reported in **2009 (2) TN MAC 169** and relevant portion of the judgment is as follows :-

18. In the case of Oriental Insurance Company Ltd. v. Rajni Devi and Others, (2008) 5 SCC 736, wherein one of us, namely, Hon'ble Justice S.B. Sinha is a party, it has been categorically held that in a case where third party is involved, the liability of the insurance company would be unlimited. It was also held in the said decision that where, however, compensation is claimed for the death of the owner or another passenger of the vehicle, the contract of insurance being governed by the contract qua contract, the claim of the claimant against the insurance company would depend upon the terms thereof. It was held in the said decision that Section 163-A of the MVA cannot be said to have any application in respect of an accident wherein the owner of the motor vehicle himself is involved. The decision further held that the question is no longer res integra. The liability under



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section 163-A of the MVA is on the owner of the vehicle. So a person cannot be both, a claimant as also a recipient, with respect to claim. Therefore, the heirs of the deceased could not have maintained a claim in terms of Section 163-A of the MVA. In our considered opinion, the ratio of the aforesaid decision is clearly applicable to the facts of the present case. In the present case, the deceased was not the owner of the motorbike in question. He borrowed the said motorbike from its real owner. The deceased cannot be held to be employee of the owner of the motorbike although he was authorised to drive the said vehicle by its owner, and therefore, he would step into the shoes of the owner of the motorbike.

19. We have already extracted Section 163-A of the MVA hereinbefore. A bare perusal of the said provision would make it explicitly clear that persons like the deceased in the present case would step into the shoes of the owner of the vehicle. In a case wherein the victim died or where he was permanently disabled due to an accident arising out of the aforesaid motor vehicle in that event the liability to make payment of the compensation is on the insurance company or the owner, as the case may be as provided under Section 163-A. But if it is proved that the driver is the owner of the motor vehicle, in that case the owner could not himself be a recipient of compensation as the liability to pay the same is on him. This proposition is absolutely clear on a reading of Section 163-A of the MVA. Accordingly, the legal representatives of the deceased who have stepped into the shoes of the owner of the motor vehicle could not have claimed compensation under Section 163-A of the MVA.

10. In view of the above decision rendered by the Apex Court, the respondents 1 and 2/legal representatives of the deceased, who had stepped into the shoes of the owner of the vehicle is not entitled to claim any compensation u/s 166 MV Act. Hence, the appeal deserves to be allowed.



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11. Accordingly, the Civil Miscellaneous Appeal is allowed and the judgment and decree dated 07.09.2018 made in M.C.O.P.No.4321 of 2015 passed by the Motor Accidents Claims Tribunal (Chief Judge, Court of Small Causes, Chennai), is set aside. If any amount deposited by the appellant/insurance company, the appellant/insurance company is permitted to withdraw the same by filing appropriate application before the Tribunal. No costs. Consequently, the connected miscellaneous petition is closed.

10.11.2023

Index : Yes / No

Speaking order / Non-speaking order

Neutral Citation Case : Yes / No

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To

1.The Motor Accident Claims Tribunal – Chennai,
Chief Judge, Court of Small Causes, Chennai.

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



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M.DHANDAPANI, J.,

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