IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.06.2023

CORAM:

THE HONOURABLE MRS.JUSTICE R.KALAIMATHI

C.M.A.No.1864 of 2020
and
C.M.P.No.13794 of 2020

The Divisional Manager,
The New India Assurance Co. Ltd.,
Motor Third Party Claim Office,
No.1, Officer Line, C.S.I Building,
II Floor, Vellore – 1. .. Appellant

Vs.

1.S.Kamatchi

2.K.Shanmugam

3.A.Mohanambigai

4.E.Aruldoss .. Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 27.04.2019 made in M.C.O.P.No.686 of 2016 on the file of the Motor Accidents Claims Tribunal, Additional District Court, (Fast Track Court), Kanchipuram.

For Appellant : Mr.S.Dhakshnamoorthy

For RR 1 to 3 : Mr.M.Sivakumar
for Mr.C.Prabakaran

JUDGMENT

Challenging the liability, the Insurance Company has preferred this Civil Miscellaneous Appeal against the Judgment and Decree dated 27.04.2019 made in M.C.O.P.No.686 of 2016 on the file of the Motor Accidents Claims Tribunal, Additional District Court, (Fast Track Court), Kanchipuram.

2.The legal heirs of deceased S.Dhakshanamoorthy, S/o.K.Shanmugam, filed claim petition under Section 163(A) of the Motor Vehicles Act, 1988 & Rules 3 of MACT Rules and Section 140 of Motor Vehicles Act, 1988, for the death of S.Dhakshanamoorthy, who is said to have died in the road accident that had taken place on 10.07.2016.

3.The learned Tribunal after appreciating the evidence on record, passed an award for a sum of Rs.5,53,840/- from the date of petition till its realization.

4.The learned counsel for appellant / Insurance Company would vehemently contend that the deceased was a tort feasor, who rode the insured vehicle in a rash and negligent manner and caused the accident without involvement of any other vehicle. Hence, the claim made under the Motor Vehicles Act for the death of the tort feasor is unsustainable in law. He would further contend that the deceased could not be treated as a third party, as he steps into the shoes of the owner of the vehicle, when he drives the vehicle as a borrower. He also would further contend that the tort feasor or his legal representatives cannot file the claim petition for his own tortious act resulting from his own negligence and that he was not a third party as envisaged under the Motor Vehicles Act. To support his above said arguments, the below said judgments were referred to.

4(a)(i).***The National Insurance Company Limited V. Poosamuthu and others***, reported in ***[MANU/TN/5066/2020]***, wherein this Court held that scope of Section 163(A) of the Act cannot be expanded, so as to cover the borrower of the vehicle, who stepped into the shoes of the registered owner and file claim petition under Section 163(A) of the Act. In the event of entertaining such claim petition, undoubtedly, the other provisions namely, Section 147 and other related provisions would got defeated and the object sought to be reached through special provisions under Section 163(A) of the Act, would also be defeated. Thus, the fact remains that in all such cases, where a vehicle was borrowed from a registered owner by any person and such vehicle met with an accident and the rider of the vehicle sustained injury or had resulted in death, then no claim petition is entertained under Section 163(A) of the Act and even in cases of claim of personal accident policy (not a statutory coverage in terms of Section 147 of the Act), then also the mandatory conditions under the personal accident policy are to be established by the claimant. This being the principles to be followed, this Court is of the considered opinion that in the present case, the claim petition is unsustainable and not entertainable and liable to be rejected.

4(a)(ii).In this case, the owner of the vehicle Tvl.Karthikeyan, while riding the Hero Honda Splendor Pro motorcycle bearing Registration No.TN 91 Y 8683 met with an accident which occurred due to the fault committed by the deceased himself and there is no other vehicle involved in the accident. The Tribunal ordered compensation to the legal heirs of the deceased

Karthikeyan, a sum of Rs.5,14,500/-. Challenging the liability, the National Insurance Company Limited preferred the appeal. This Court set aside the judgment and decree dated 13.11.2017 passed in M.C.O.P.No.15 of 2017 by allowing the Civil Miscellaneous Appeal.

4(b).In ***The Branch Manager, The Oriental Insurance Company Limited Vs. R.Jothi and others***, reported in ***[MANU/TN/3420/2022]***, wherein this Court held that the deceased Venkatesan borrowed the vehicle of his father and met with an accident. Claim petition was filed that the deceased Venkatesan applied brakes when a cow crossed the road. By his own act of rashness and negligence, the deceased suffered injuries. It was held that claimant cannot claim any amount from the insurer, as a borrower, by his own act of rashness and negligence, he cannot claim any amount from the insurer and the judgment and decree passed by the Motor Accidents Claims Tribunal / Chief Judicial Magistrate, Tiruvarur in M.C.O.P.No.253 of 2015 dated 02.06.2016 was set aside by allowing the Civil Miscellaneous Appeal.

5.Whereas, the learned counsel for the respondents / claimants would state that as per the judgment of the Hon'ble Apex Court passed in

Ramkhiladi and others Vs. The United India Insurance Company and others, the claimants are at the best entitled to Rs.1,00,000/- under personal accident coverage.

6.Heard the learned counsel for the appellant – Insurance Company and the learned counsel for the respondents 1 to 3 and perused the entire materials on record.

7.The respondents 1 to 3/claimants have filed claim petition under Section 163(A) of the Motor Vehicles Act, but the Tribunal in the award has mistakenly mentioned that the respondent nos.1 to 3 have filed claim petition under Section 166 of the Motor Vehicles Act.

8.Further, it is the case of the respondents 1 to 3 that the deceased borrowed the motorcycle bearing Registration No.TN 05 F 2307 belonging to 4^{th} respondent, caused the accident and died. This stand was not denied by the Insurance Company in their counter. Therefore, it is made clear that the deceased was the borrower of the motorcycle belonging to 4^{th} respondent.

9.It is seen that the claim petition is filed under Section 163(A) of the Motor Vehicles Act, by the legal heirs of the deceased S.Dhakshanamoorthy, who died of the road accident when he was riding his owner's Hero Honda Passion Pro motorcycle bearing Registration No.TN 05 F 2307 on 10.07.2016.

10.On behalf of the appellant / 2nd respondent - New India Insurance Company Limited, the petition details were counteracted by way of filing counter that claim petition is unsustainable for the reason that the deceased was a tort feasor of the above accident and insured and deceased were in relationship of owner and employee and the Insurance Company is not statutorily liable to pay any compensation to the claimants / respondents 1 to 3 herein.

11.The learned Tribunal without adverting to the above issue has passed an award of Rs.5,53,840/- with interest at the rate of 7.5% per annum from the date of application till the date of deposit.

12.From a perusal of the claim petition as well as the oral evidence, it is made clear that the deceased S.Dhakshanamoorthy, while he was riding his owner's Hero Honda Passion Pro motorcycle bearing Registration No.TN 05 F 2307 from owner's house to his house, got skidded in the sand and fell down from the bike and sustained fatal injuries and on the next day of the accident, he died in the Hospital. Therefore, it is the case of the claimants that the deceased S.Dhakshanamoorthy as a borrower, without any involvement of other vehicle met with an accident and succumbed to the injuries on the next day of occurrence.

13.The question of law involved in this case is held in ***Ramkhiladi and others Vs. The United India Insurance Company and others***, reported in ***[2020 ACJ 627]***. In Ramkhiladi's case, the Hon'ble Apex Court has held that it is true that in a claim petition under Section 163(A) of the Act, there is no need for the claimants to plead or establish the negligence and that the death is sought to be established was due to wrongful act 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, the deceased has to be a third party and cannot maintain the claim under Section 163(A) of the Act against the owner / insurer of the vehicle, which is borrowed by him as he will get into the shoes of the owner and he cannot maintain a claim under Section 163(A) of the Act against the owner and insurer of the vehicle bearing Registration No.RJ 02 SA 7811.

13(i).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.

14.In order to have a proper understanding, it is better to extract the provision namely Section 163(A) of the Motor Vehicles Act, 1988.

> ***"163. Scheme for payment of compensation in case of hit and run motor accidents.***
>
> *163A. Special provisions as to payment of compensation on structured formula basis.— (1) Notwithstanding anything contained in this Act or in any other law for the time being in force or instrument having the force of law, the owner of*

the motor vehicle of the authorised insurer shall be liable to pay in the case of death or permanent disablement due to accident arising out of the use of motor vehicle, compensation, as indicated in the Second Schedule, to the legal heirs or the victim, as the case may be."

15.In ***The National Insurance Company Limited V. Poosamuthu and others***, ***[MANU/TN/3420/2022]***, cited supra, this Court has held that in the event of interpreting any Special provision in isolation to the other provisions of the Statute, then the very object would be defeated and therefore, the Courts cannot make an interpretation of a Special Provision, which is otherwise intended to grant certain benefits in respect of grant of Compensation in the event of not establishing negligence. It was held that, even the Personal Accident Coverage cannot be considered in certain cases, where the victim is not the registered Owner of the vehicle. Three conditions are required even under Personal Accident Policy (which is not a Statutory coverage in terms of Section 147 of the Act). The said three conditions are mandatory, so as to avail Compensation under the Personal Accident Policy (not a Statutory coverage in terms of Section 147 of the Act). The conditions are:

(a)the Owner-Driver is the registered Owner of the Vehicle insured;

(b)the Owner-Driver is the insured named in the policy;

(c)the Owner-Driver holds an effective Driving License, in accordance with the provisions of Law.

15(i).In ***The National Insurance Company Limited V. Poosamuthu and others***, ***[MANU/TN/3420/2022]***, cited supra, this Court also held that with reference to Section 163-A of the Motor Vehicles Act, 1988, the Hon'ble Supreme Court has taken a view that if a borrower of the vehicle met with an accident while riding the Vehicle, he cannot claim Compensation under Section 163-A of the Act. The reason being in the event of granting Compensation without adjudication of negligence, then the same would result in defeating the very object of the Act, under Sections 147 & 166 of the Motor Vehicles Act. When Section 147 categorically enumerates requirements of policies, limits and liabilities, the same cannot be whittled down, while dealing with the Claim Petitions under Section 163-A of the Act.

All these provisions are to be read conjointly for the purpose of granting the benefit of Special provision enacted under Section 163-A of the Act, for payment of Compensation on structured formula basis. When the Special Provision is specifically provided for a Structured Formula basis, it cannot be read in isolation with reference to the nature of the contracted policy and the requirement of Policy and limited liabilities Clauses, which all are well enumerated under the Provisions of the Act. Thus, this Court is of the considered opinion that a person, who borrowed a Vehicle from the registered Owner and while driving the same met with an accident sustained injuries or dead, then he is not entitled for claiming Personal Accident Policy (not a statutory coverage in terms of Section 147 of the Act), he is bound to establish the three Mandatory conditions and in the absence of compliance with the said three conditions, he is not entitled for Compensation.

16.No doubt that the liability of the Insurance Company is fixed as per the terms and conditions of the contract of insurance. In ***Ningamma & another v. United India Insurance Co. Ltd.,*** reported in ***[2009 (13) SCC 710]***, it was held that claim petition filed under Section 163(A) of the Act by the legal representatives of the deceased against the real owner of the motorcycle, since the deceased has stepped into the shoes of the owner of the vehicle.

17.As every contract of insurance is being governed by terms and conditions of the policy, in this case, the terms of the policy has to be looked into. The premium schedule is extracted hereunder:

Policy Details:

Geographical Area / Zone	India/A	Year of manufacture	2011
Name of the Financier:		Chassis no./ Engine no.	MBLHA10EWBG C23631/HA10EDB GC 47074
Type of fuel:	Petrol	Cubic capacity (CC)	97
Type of body:	Metal	Variant:	HERO PASSION PRO DRUM SELF CAST
Seating capacity including Driver:	2	Colour:	Black
Automobile Association membership:	None	Name of registration authority:	Chennai North
Cover Note No/Cover Note Issue Date:	/		

IDV (in')

Vehicle	Trailer	Non-Elec Acc	Electrical Acc	Fuel Kit	Total Value
18000	0	0	0	0	18000

Schedule of Premium

Own Damage		Liability	
Basic OD Cover		Basic TP Cover	
OD Premium in '	213	TP Premium	619

18.From a careful reading of Ex.R1 / two wheeler package policy, it is discernible that for own damage, an amount of Rs.213/- is paid. For third party liability, a premium of Rs.619/- was collected and no premium was collected towards personal accident coverage.

19.In the case on hand, it is seen from Ex.R1 / copy of the Insurance Policy for the motorcycle bearing Registration No.TN 05 F 2307, no premium is collected from the 4th respondent / owner of the motorcycle towards personal accident coverage. Hence, the principle laid down by the Hon'ble Apex Court in the judgment reported in ***2020 ACJ 627***, cited supra, is not applicable to this case and the respondents 1 to 3 are not entitled to any compensation under personal accident coverage. The deceased as a borrower has got into the shoes of the owner. Here, the deceased was admittedly a tort feasor. A tort feasor cannot be a claimant as well as recipient.

20.In the result, this Civil Miscellaneous Appeal is allowed and a sum of Rs.5,53,840/- awarded by the Tribunal as compensation to the respondents 1 to 3 is hereby set aside. The appellant-Insurance Company is permitted to withdraw the award amount lying in the credit of M.C.O.P.No.686 of 2016, if the appellant has already deposited any of the award amount. Consequently the connected Miscellaneous Petition is closed. No costs.

19.06.2023

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Index : Yes / No
Internet : Yes / No
Neutral Citation : Yes / No

R.KALAIMATHI, J.

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To

1.The Additional District Judge,
Motor Accidents Claims Tribunal,
Fast Track Court,
Kanchipuram.

2.The Section Officer,
VR Section,
High Court, Madras.

C.M.A.No.1864 of 2020

19.06.2023