IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.11.2023

CORAM:

THE HONOURABLE MR. JUSTICE **K. RAJASEKAR**

C.M.A.No.1895 of 2021
and
C.M.P.No.10252 of 2021

The New India Assurance Company Limited,
Motor Third Party Claims Hub,
No.45, Moore Street, Chennai 600 001. ... Appellant

Vs.

1.E.Prema
2.Minor K.Kamesh
3.Minor E.Hemnath
4.Minor E.Harini
5.Panchammal
(2nd, 3rd and 4th minor petitioners rep. by
their mother and natural guardian E.Prema)

6.G.Lakshmanan … Respondents

Memorandum of Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the judgment and decree dated 29.09.2020 made in M.C.O.P.No.104 of 2015 on the file of the Motor Accident Claims Tribunal, VI Court of Small Causes, Chennai.

For Appellant	:	Mr.K.Vinod
For Respondents 1 to 5	:	M/s.M.Malar
For Respondent 6	:	No Appearance

JUDGMENT

This Civil Miscellaneous appeal has been filed challenging the liability fixed on the Insurance company to pay compensation to the claimants as per award against the Judgment and Decree dated 29.09.2020 made in M.C.O.P. No.104 of 2015 on the file of the Motor Accident Claims Tribunal, VI Court of Small Causes, Chennai.

2. For the sake of convenience, the parties are referred to herein according to their litigative status before the Tribunal.

3. The case in brief is that on 06.07.2014 at about 22 hours, the deceased was riding Motor cycle bearing Registration No.TN-11-H-0906 from Kandigai to Melakottaiyur direction at Melakottaiyur. At that time, unknown car came at a dangerous speed and dashed against the deceased vehicle in a rash and negligence manner. The deceased sustained fatal

injuries and died on the same day. Hence, the deceased is entitled to claim compensation. The first respondent who is the owner of the vehicle and the second respondent is the insurer of the vehicle, both are statutorily and vicariously liable to pay compensation to the deceased.

4. On the side of the petitioner, PW1 and PW2 were examined and Ex.P1 to Ex.P16 were marked and on the side of the respondent, no witnesses were examined and no exhibits were marked.

5. The learned counsel for the Insurance company submitted that in this case the claimant has sustained injuries after two wheeler was dashed by the unknown vehicle. Hence, this claim compensation as against the unknown vehicle.

6. The claim of the insurance company is that by invoking 163(A) of the Motor Vehicles Act and the Tribunal has also awarded compensation as per principle laid down by the Hon'ble Apex Court in ***Ramkhiladi and Ors. Vs. The United India Insurance Company and Ors. reported in MANU/SC/0008/2020.***

7. The learned counsel for the claimants would submit that since 163-A is based on no fault liability principle and since the claimant is also sustained injuries, as per the negligent Act of the unknown vehicle, the deceased is entitled to get the compensation from the Insurance Company.

8. I have considered the rival submissions on both sides and also perused the entire records.

9. Admittedly, the deceased/claimant in this case is the owner of the two wheeler, who is arrayed as first respondent. According to the claimant that the deceased was hit by unknown vehicle. Hence, claimants is entitled the claim compensation from the owner of the vehicle in which he had travelled. The legal issue involved in this case is no longer ***Res Integra*** and it has been categorically answered by the ***Hon'ble Apex Court in Ramkhiladi and Ors. Vs. The United India Insurance Company Limited and Ors., reported in MANU/SC/0008/2020*** held 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.

5.9. *Now, so far as the submission made on behalf of the claimants that in a claim Under Section 163A 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 163A of the Act would be maintainable is concerned, in view of the decision of this Court in* ***Rajni Devi*** *(supra), the aforesaid cannot be accepted. In* ***Rajni Devi*** *(supra), it has been specifically observed and held that the provisions of Section 163A 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 the cases of* ***Oriental Insurance Co. Ltd. v. Jhuma Saha*** *MANU/SC/7047/2007 : (2007) 9 SCC 2 6 3 ;* ***Dhanraj*** *(supra);* ***National Insurance Co. Ltd. v. Laxmi Narain Dhut*** *MANU/SC/1233/2007 : (2007) 3 SCC 700 and****P remkumari v. Prahlad Dev*** *MANU/SC/7081/2008 : (2008) 3 SCC 193, it is ultimately concluded by this Court that the liability Under Section 163A 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 163A 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 the case of ***Ashalata Bhowmik*** *(supra), 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 hereinabove."*

10. In this case, Admittedly, the claimant is the owner of the two wheeler, he cannot be the recipient as well as the claimant. According to them, deceased was died due to the negligent on the part of the unknown vehicle. The deceased, being owner of the vehicle he cannot maintain petition under Section 163-A of the Act against his own insurer. Since, insurer is indemnifying the owner of vehicle under Section 147 of the Motor Vehicles Act and it does not require to assume risk for death or bodily injury to the owner of the vehicle, the claim by the dependants of the owner of vehicle under Section 163 A is not maintainable. Since, the claim petition filed by the claimants herein against the respondent is not maintainable, if at all aggrieved, they have to invoke relevant provisions for getting

compensation under personal accident cover.

11. Accordingly, this Civil Miscellaneous Appeal is allowed. The Award and Decree passed by the Tribunal in M.C.O.P.No.104 of 2015, dated 29.09.2020, on the file of the Motor Accident Claims Tribunal, VI Court of Small Causes, Chennai, is hereby set aside. The Insurance Company is permitted to withdraw the amount which was lying in the credit of M.C.O.P.No.104 of 2015, if any, already deposited. There shall be no order as to costs. Consequently, the connected miscellaneous petition stands closed.

29.11.2023

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

K. RAJASEKAR, J.

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To:

1.The VI Judge, Small Causes Court,
Motor Accident Claims Tribunal,
Chennai.

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

C.M.A.No.1895 of 2021

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