



C.M.A.No.391 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.10.2023

CORAM:

THE HONOURABLE MR. JUSTICE K.RAJASEKAR

Civil Miscellaneous Appeal No.391 of 2021
and

Civil Miscellaneous Petition No.2579 of 2021

The United India Insurance Co., Ltd.,
Micro Office, Sankaralinganar Street,
N.G.R.Road, Palladam.

... Appellant / 2nd Respondent

Vs.

1. M. Ramesh

2. R. Ramalakshmi

... Respondents / Claimants

3. Sri Venkatachalapathi Traders,
353, Kamaraj Road, Tirupur Town,
Tirupur District.

4. Tamil Nadu State Transport Corporation
Coimbatore Division, Mettupalayam Road,
Coimbatore District.

... Respondent/Respondent

Civil Miscellaneous Appeal filed under Section 173 of the
Motor Vehicles Act, 1988, against the Award and Decree dated 30.01.2018
made in M.C.O.P.No.191 of 2013 on the file of the Motor Accidents Claims
Tribunal, II Additional District Judge, Tirupur.

For Appellant	:	Mr. C.Paranthaman
For R1 & R2	:	Mr. Ma. P. Thangavel



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For R2 : Name Printed

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JUDGMENT

This Civil Miscellaneous Appeal has been filed by the second respondent-Insurance Company, challenging the liability fixed on them to pay the compensation as per the Award passed in M.C.O.P.No.191 of 2013, dated 30.01.2018, on the file of the Motor Accidents Claims Tribunal, II Additional District Judge, Tirupur.

2. The parties are referred to herein according to their status and ranking before the Tribunal.

3. The case of the claimant is that on 05.01.2013 the claimant was riding his two-wheeler namely PULSAR bearing Registration No.TN 39 V 9372 on Tirupur to Palldam Road, at about 7.45 p.m., he was reached near Amman Hallo Block at Karaampudur, an unknown vehicle came parallel to the deceased vehicle and to avoid accident with the parked vehicle namely Mahindra Nission suddenly moved on the right hand side of the road, which resulted in sudden stop of the Transport Corporation bus



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bearing Registration No.TN 38 N 1675 in the middle of the road. Due to sudden stop of the bus, the deceased two-wheeler dashed on the rear side of the bus and that he sustained grievous injuries and thereafter, he succumbed to the injuries. A criminal case was also registered in Crime No.21 of 2013, under Sections 279 and 304(A) of IPC on the file of the Palladam Police Station. The deceased was aged about 20 years and he was a manual worker and that the dependants of the deceased have come forward to file Claim Petition, claiming compensation of Rs.20,00,000/- and they have also invoked under Section 163-A of the Motor Vehicles Act for claiming compensation against the owner and insurer of the two-wheeler, in which the deceased was travelled and also against the Transport Corporation bus.

4. The second respondent therein who is the insurer of the Pulsar Bike in which, the deceased was travelled has filed counter and contended that the deceased himself is a tortfeasor, he has driven the Pulsar Bike in rash and negligent manner and hit on the bus and sustained injuries. Hence, the Insurance Company of the Pulsar Bike is not liable to pay the compensation. They have also contended that there is no valid insurance policy of the Pulsar Bike and also there is no proper licence to drive the



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vehicle. Hence prays to dismiss the claim petition.

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5. The third respondent-Transport Corporation Bus has filed counter and contended that the bus was not involved in the accident and it has been falsely implicated in this case for the purpose of claiming compensation. On 05.01.2013, the Transport Corporation Bus bearing Registration No.TN 38 N 1675 was plied between Kinathukadavu to Tirupur route at about 7.40 p.m., the vehicle was reached near Sulthanpet which was 30 kms. away from the accident place, the bus was completed its trip and another trip was also taken between the very same route at about 8.50 p.m. On perusal of FIR is sufficient to show that falsely implication of the bus and they were not aware about the various facts alleged against the unknown two-wheeler about the parked vehicle. Hence prays to grant compensation.

6. Before the Tribunal, on the side of the claimant, P.W.1 to P.W.4 were examined and Exs.P1 and P11 were marked. On the side of the second respondent, R.W.1 and R.W.2 were examined and Exs.R1 and R2 were marked.



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7. Based on the evidence placed on record, the Tribunal in Point No.1 has held that since the claim petition filed under Section 163-A of the Motor Vehicles Act, the negligent act need not be considered and that the second respondent-Insurance Company is liable to pay the compensation to the petitioners. In Point No.2, the Tribunal has quantified the compensation and awarded a sum of Rs.6,60,000/- as compensation with interest at the rate of 7.5% per annum from the date of filing of claim petition till the date of realisation.

8. Aggrieved over the award of the Tribunal that directing the Insurance Company to pay the compensation, this appeal has been filed by the Insurance Company on the ground that there is no insurance coverage for the rider of the two-wheeler since nature of policy is Act only policy.

9. The learned counsel for the Insurance Company submits that since there is no coverage for the owner cum driver or rider of the two-wheeler, the compensation claimed under Section 163-A of the Motor Vehicles Act, is not maintainable and the Tribunal has not properly



considered this aspect and prays to set aside the compensation awarded.

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10. The learned counsel for the claimants submits that specific case of the claimants that the negligent acts of the drivers of three vehicles had been pleaded and accordingly, evidence also been produced. He further submitted that one Mahindra Nission vehicle was parked in the middle of the road and to avoid the accident another two-wheeler, which was driven parallely to the two-wheeler of the deceased suddenly crossed the parked vehicle in zigzag manner, resulted in sudden stop of the bus in the middle of the road, which also resulted in the deceased hit on the rear side of the bus.

11. As per the Judgment of the Hon'ble Apex Court reported in ***Khenyei vs. New India Assurance Company Ltd., and Others [2015 (1) TN MAC 801 SC]***, the claimant is entitled to get compensation from any one of the tortfeasor. Since in this case, the petition filed under Section 163-A of the Motor Vehicles Act, the Insurance Company is liable to pay the compensation and the claimant is entitled to claim compensation from any one of the person. The Insurance Company has not produced any evidence to establish that there is no coverage for the rider of the two-wheeler and since there is no such defence taken by the Insurance Company, the



Tribunal has not given any finding with regard to the coverage of the owner of the vehicle, and his entitlement under Section 163-A of the Motor Vehicles Act. He has also prayed for remanding the matter since there is no finding regarding composite negligence which would entitle the claimants to claim compensation from any one of the tortfeasors.

12. The learned Standing Counsel for the State Transport Corporation has submitted that it is true that there is no finding given by the Tribunal regarding the negligent act and also the person who is responsible for the accident.

13. Admittedly, in this case, the claimants have pleaded that, rider of unknown two-wheeler had negligently acted, which resulted in the accident. That being so, the petition filed under Section 163-A of the Motor Vehicles Act, is maintainable against the insurer of the two-wheeler, in which, the deceased was travelled. He has also stated that since the Insurance Company alone is challenged the award, the matter need not be remanded back since there is a categorical evidence adduced from the side of the Transport Corporation that their vehicle has not been involved in the accident and the evidence placed also support their case that the Transport



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Corporation bus has been falsely implicated in this case.

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14. I have considered the submissions made on both sides and also perused the materials placed on record.

15. On a perusal of the pleadings and findings of the Tribunal shows that the Tribunal has not rendered any finding relating the persons responsible for the accident. Eventhough, the claimant need not prove any negligent act while compensation under Section 163-A of the Motor Vehicles Act, the accident of this nature which shows involvement of three vehicles, the proof of manner of accident is very much necessary. The respondents have also denies the involvement of their vehicles. The Tribunal eventhough, evidence was available before it, has avoided the discussion regarding the tortious act and by relying on the provisions of Section 163-A of the Motor Vehicles Act, has held that there is no need for discussion regarding negligent act.

16. This Court is of the view that this finding is not proper since, the Insurance Company has specifically pleaded in the plaint that the claimant himself is a tortfeasor and the Insurance Company is not liable to



pay the compensation. As per the Judgment of the Hon'ble Apex Court in

Ramkhilladi and another vs. United India Insurance Company and another [2020 (2) SCC 550], it has been held that, even petition filed under Section 163-A of the Motor Vehicles Act, the Insurance Company is entitled to take defence that the claimant is responsible for the accident, and if succeeded, then the claimant is not entitled to claim compensation. Such being the legal provision and there is a specific pleading made by the Insurance Company that the claimant himself is the responsible for the accident, the Tribunal ought to have given a finding after discussing the evidence placed on record.

17. Similarly, the claimants herein seeking compensation from the respondents jointly and severally, as per the Judgment of the Hon'ble Apex Court in **Khenyei vs. New India Assurance Company Ltd., and Others [2015 (1) TN MAC 801 SC]**, the Tribunal may decide the extent of composite negligence of the claimants. Eventhough the composite negligence need not be considered in the petition filed under Section 163-A of the Motor Vehicles Act, as observed by this Court in earlier paragraphs that the negligent act of the driver of the two-wheeler i.e., the deceased, is also a relevant fact to be decided by the Tribunal to give finding with regard



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to the composite negligence also.

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18. Accordingly, the matter requires re-consideration of the Tribunal to consider, whether any negligent act on the part of the deceased or the negligent act by other drivers of vehicles involved is required for awarding compensation and for awarding consequential reliefs.

19. Accordingly, the award of the Tribunal is set aside and the matter is remanded back for reconsideration of liability of the drivers of the vehicles involved in the accident. For the purpose of better appreciation of the case of parties, they shall also be given opportunity to adduce additional evidence if any, required. This exercise shall be completed within a period of three months from the date of receipt of a copy of this Judgment.

20. With the above observations, the Civil Miscellaneous Petition stands allowed. No costs. Consequently, the connected miscellaneous petition stands closed.

04.10.2023

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Index:Yes/No



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

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To:

1. The II Additional District Judge,
Motor Accidents Claims Tribunal,
Tirupur.
2. The Section Officer,
V.R.Section,
High Court,
Chennai.



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K.RAJASEKAR,J.

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