IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 23.08.2023

CORAM:

THE HONOURABLE MR.JUSTICE K.RAJASEKAR

C.M.A. No. 2226 of 2014
and
M.P. No. 1 of 2014

National Insurance Co. Ltd.,
Vigneshwara Building,
No.2/7, Pudukottai Road,
Near Over Bridge,
Thiruchirapalli-620 020. ... Appellant

Vs.

1. Asokan @ Ashokkumar
2. M. Mariappan … Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 to set aside the Judgement and Decree dated 29.10.2013 made in M.C.O.P. No. 585 of 2013, on the file of the Motor Accident Claims Tribunal, Special Sub Judge, Krishnagiri.

For Appellant	:	Mr. S. Vadivel
For R1	:	Mr. M. Selvam
For R2	:	Dispensed with

JUDGMENT

This Civil Miscellaneous Appeal has been filed by the Insurance Company against the Judgment and decree dated 29.10.2013 made in M.C.O.P. No. 585 of 2013 on the file of the Motor Accident Claims Tribunal, Special Sub Judge, Krishnagiri, challenging the liability to pay compensation to the claimant herein.

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

3. On 22.07.2007, the claimant was riding a two-wheeler bearing Registration No. TN-29-AZ-0968 along with one Govindan as pillioner, from Kambainallur to Semanahalli, via Odasalpatti road, at about 20.30 hours and the motor cycle was capsized, which resulted in causing serious injuries to the rider as well as pillion rider. The claimant has filed this claim petition under Section 163-A of the Motor Vehicles Act, seeking compensation for a sum of Rs.7,00,000/-.

4. The first respondent is the owner of the two-wheeler bearing Registration No. TN-29-AZ-0968 remained ex-parte. The second respondent filed counter and contented that the claimant himself is a tortfeasor and he rode the two-wheeler in rash and negligent manner and sustained injuries, hence the Insurance Company is not liable to pay the compensation. He further contended that the age, occupation and income of the claimant is not proved by the claimants and also no permanent disability was caused to him, hence, prays to dismiss the claim petition.

5. Before the Tribunal, on the side of the petitioner, P.W.1 and P.W.2 were examined and Exs.P1 to P9 were marked and on the side of the respondent, R.W.1 was examined and Exs.R1 and R2 were marked.

6. Based on the evidences placed on record, in Point No.1, the Tribunal has held that since the petition was filed under Section 163-A of the Motor Vehicle Act, by relying on the Judgment of the Hon'ble Apex Court in ***National Insurance Company Ltd., vs. Sinitha and Others [2012 ACJ 1 (SC)]*** has held that the Insurance policy herein is a package policy which covers the risk of its driver and so, the claimant is covered by that policy, hence he is entitled for compensation. The Tribunal further held that the claimant is entitled for a sum of Rs.5,08,921/- as compensation along with interest at the rate of 6% per annum from the date of claim petition till the date of realization.

7. Aggrieved over the award of the Tribunal, granting compensation to the claimant, this appeal has been filed by the Insurance Company on the ground that the claimant himself is a tortfeasor, he is not entitled to claim compensation under Section 163-A of the Motor Vehicles Act.

8. The learned counsel for the Insurance Company has relied on the Judgment of the Hon'ble Apex Court passed ***Ramkhiladi and another vs. United India Insurance Co., Ltd., [2020 (2) SCC 550],*** contended that the order of Tribunal is not sustainable since, the rider of the two-wheeler could not be treated as a third party as observed that the Tribunal and as per Section 163-A of the Motor Vehicles Act, the tortfeasor himself is not entitled to claim compensation.

9. The learned counsel for the claimant has submitted that the Tribunal based on the evidences placed on record, has come to the conclusion that the driver of the two-wheeler is to be treated as a third party. Since there is a coverage for claiming compensation, the claimant is entitled for claiming compensation and the Tribunal has rightly awarded compensation and prays to confirm the same.

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

11. The question relating to entitlement of compensation by the tortfeasor himself by invoking under 163-A of the Motor Vehicles Act, is no longer *res-integra* and the Hon'ble Apex Court in ***Ramkhiladi and another vs. The United India Insurance Company Limited [2020 (2) SCC 550]*** has held that the scope of claim petition filed under Section 163-A of the Motor Vehicles Act and held in paragraph 9.5 and 9.6 as held as follows:

> ***"9.5.*** *It is true that, in a claim under Section*

163-A 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 163-A 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 163-A 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 163-A 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 Dhanraj [Dhanraj v. New India Assurance Co. Ltd., (2004) 8 SCC 553 : 2005 SCC (Cri) 363] , 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 authorised 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.

9.6. *In view of the above and for the reasons* *stated above, in the present case, as the claim under Section 163-A 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 163-A 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."*

12. Recently, Division Bench of this Court in ***Iffco Tokio General Insurance Company Limited vs. K. Pazhanivel and others [2023 (1) TNMAC 73]*** has held that the rider of the two wheeler, when steps into the shoes of the owner is not entitled to maintain claim petition under section 163-A of the Motor Vehicles Act.

13. In this case, admittedly the claimant has borrowed the two-wheeler bearing Registration No. TN-29-AZ-0968 which belongs to the first respondent herein and rode the same from Kambainallur to Semanahalli on 22.07.2007, at about 20:30 hours, he met with an accident without involvement of any third party vehicle. The claimant filed a claim petition against the owner of the two-wheeler and insurer, since the claimant steps into the shoes of the owner of the vehicle U/s. 163 (A) of Motor Vehicles Act, he shall not termed as third party. The Tribunal while relying on the policy, Ex.R2 has held that the claimant shall be treated as a third party and awarded compensation, which is not sustainable.

14. Since the Tribunal has granted compensation to the claimant on the basis that the claimant is a third party which was against the judgment laid down by the Hon'ble Apex Court in ***Ramkhiladi and another vs. The United India Insurance Company Limited*** cited supra. Since, the claimant himself is the tortfeasor, he is not entitled to claim any compensation and the award of the Tribunal granting compensation is liable to set aside.

15. The Award and Decree passed by the Tribunal in M.C.O.P.No.585 of 2013, dated 29.10.2013, on the file of the Motor Accidents Claims Tribunal, Special Sub Judge, Krishnagiri, is hereby set aside. There shall be no order as to costs. In the result, this Civil Miscellaneous Appeal is allowed, consequently, connected miscellaneous petition stands closed.

23.08.2023

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

To:

1. The Special Sub Judge,
   Motor Accident Claims Tribunal,
   Krishnagiri.

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

K. RAJASEKAR, J.

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