



C.M.A.No.4216 of 2019

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**DATED : 27.11.2023**

**CORAM**

**THE HONOURABLE MR.JUSTICE M.DHANDAPANI**

**C.M.A.No.4216 of 2019**

**And**

**C.M.P.No.23855 of 2019**

The United India Insurance Co. Ltd.,  
No.134, Greams Road,  
Silingi Building, 4<sup>th</sup> Floor,  
Chennai – 600 006.

... Appellant

Vs.

1.G.Dhakshiyani  
2.Vijayakumar

... Respondents

**Prayer:**

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the award and decree dated 05.04.2019 made in M.C.O.P.No.5580 of 2014 on the file of the Motor Accidents Claims Tribunal, (Special Sub Court No.1, Small Causes Court, Chennai).

For Appellant : Mr.A.Dhiraviyanathan  
For Respondents : Mr.R.Nalliyappan for R1  
R2 – No Appearance



C.M.A.No.4216 of 2019

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### **J U D G M E N T**

The second respondent Insurance Company before the Motor Accidents Claims Tribunal is the appellant herein. This appeal has been filed against the judgment and decree dated 05.04.2019 passed by the Motor Accidents Claims Tribunal, (Special Sub Court No.1, Small Causes Court, Chennai), in M.C.O.P.No.5580 of 2014.

2.The brief facts of the case is that on 20.03.2014, at about 11.20 hours, the first respondent was riding the two wheeler bearing Registration No.TN 02 AV 6179 on Annanagar Santhi Colony near Santhi Colony Police Station and 13<sup>th</sup> Main Road Junction. At that time, a white car came and dashed at the backside of the two wheeler, due to which, the first respondent sustained injuries.

3.Thereafter, the injured claimant/ first respondent filed claim petition before the Motor Accidents Claims Tribunal, claiming compensation of Rs.10,50,000/-. After adjudication, the Motor Accidents Claims Tribunal awarded a sum of Rs.2,95,045/- with interest at the rate of 7.5% p.a. from the date of filing of the claim petition i.e., 26.08.2014 till the date of realisation and costs and directed the appellant Insurance Company to deposit the



C.M.A.No.4216 of 2019

compensation amount. Aggrieved by the same, the appellant Insurance Company has filed this appeal.

4.The learned counsel appearing for the appellant submitted that the first respondent in the claim petition claim that on 20.03.2014, at about 11.20 hours when the first respondent was riding the two wheeler near Santhi Colony Police Station and 13<sup>th</sup> Main Road Junction, a white car came and dashed at the backside of the two wheeler, due to which, the accident occurred, however, has filed claim petition as against the owner of the two wheeler and insurer of the two wheeler under Section 163 A of the Motor Vehicles Act, which is not sustainable one. The first respondent is not the third party and she cannot claim compensation as against the appellant for the vehicle driven by her.

5.The learned counsel appearing for the appellant further submitted that the issued involved in the present case is covered by the decision of the Hon'ble Apex Court reported in **(2020) 2 SCC 550 [Ramkhiladi & Anr. Vs. The United India Insurance Company & Anr.]**, wherein the Hon'ble Apex Court has categorically held that the



C.M.A.No.4216 of 2019

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insurance company shall be liable to pay the compensation to a third party and in the present case, the first respondent is not a third party.

6.Per contra, the learned counsel appearing for the first respondent/ claimant submitted that the motorcycle is owned by the second respondent and the first respondent borrowed the vehicle and was driving the vehicle and at that time a car came and dashed against the motorcycle. Hence, the first respondent is entitled to file claim petition under Section 163 A of the Motor Vehicles Act as against the owner of the vehicle and the insurer of the vehicle and hence the impugned judgment warrants no interference.

7.Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the first respondent and perused the materials available on record.

8.Admittedly, on 20.03.2014, at about 11.20 hours, the first respondent was riding the two wheeler owned by the second respondent and insured with the appellant on Annanagar Santhi



C.M.A.No.4216 of 2019

Colony near Santhi Colony Police Station and 13<sup>th</sup> Main Road Junction.

At that

time, an unknown white car came and dashed at the backside of the two wheeler, due to which, the first respondent sustained injuries. However, the first respondent has not taken any steps to implead the owner of the unknown car and its insurer, instead filed claim petition as against the owner of the motorcycle driver by her and its insurer.

9.The very same issue was considered by the Hon'ble Apex Court in the decision reported in **(2020) 2 SCC 550 [Ramkhiladi & Anr. Vs. The United India Insurance Company & Anr.]**, the relevant portion of which, is extracted hereunder:

*"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*



C.M.A.No.4216 of 2019

*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*



C.M.A.No.4216 of 2019

*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.*



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C.M.A.No.4216 of 2019

*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 2 nd 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.*



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C.M.A.No.4216 of 2019

*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 2 nd 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*



C.M.A.No.4216 of 2019

*Saha (2007) 9 SCC 263; Dhanraj (supra); National Insurance Co. Ltd. V. Laxmi Narain Dhut (2007) 3 SCC 700 and Premkumari v. Prahlad Dev (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.The decision cited supra makes it clear that the liability of the insurance company would be for third party only. In the present case, the first respondent borrowed the vehicle from the second respondent and hence, she is not a third party and hence, she cannot

10/12



C.M.A.No.4216 of 2019

file claim petition as against the owner of the vehicle driven by her and its insurer.

11.The civil miscellaneous appeal is allowed. The judgment and decree dated 05.04.2019 passed by the Motor Accidents Claims Tribunal, (Special Sub Court No.1, Small Causes Court, Chennai), in M.C.O.P.No.5580 of 2014, is set aside. No costs. Consequently, the connected miscellaneous petition is closed.

**27.11.2023**

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Index: Yes/ No

Speaking Order: Yes/ No

NCC: Yes/ No

To

1.The Motor Accidents Claims Tribunal,  
(Special Sub Court No.1, Small Causes Court, Chennai).



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C.M.A.No.4216 of 2019

**M.DHANDAPANI,J.**  
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**C.M.A.No.4216 of 2019**  
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C.M.A.No.4216 of 2019