IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.09.2023

CORAM:

THE HONOURABLE MR.JUSTICE K.RAJASEKAR

C.M.A. No. 2417 of 2017

Oriental Insurance Company Ltd.,
Rep. by its Branch Manager,
Branch Officer at No.25-C, Arunagiri Complex,
3rd Floor, Bye-Pass Road,
Hosur - 635 109. ... Appellant

Vs.

1. J. Karthik
2. Nagarathinamma … Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 to set aside the decree and judgement dated 19.12.2006 in M.C.O.P. No. 249 of 2005 on the file of the Motor Accident Claims Tribunal, Sub Court, Hosur.

For Appellant	:	Mr. S. Manohar
For R1	:	Mr. Shakespeare
For R2	:	Party in Person

JUDGMENT

This Civil Miscellaneous Appeal has been filed by the Insurance Company against the Award and Decree dated 19.12.2006 in M.C.O.P. No. 249 of 2005 on the file of the Motor Accident Claims Tribunal, Sub Court, Hosur, challenging the liability to pay compensation of Rs.1,90,000/- to the claimant.

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

3. The case of the claimant is that the claimant has driven the Mahindra Armada Jeep bearing Registration No. KA-05-B-8559 along with nine passengers from Dharmasthala to Thenkannikottai on 19.11.2003 about 4:30AM with due care and caution. While the vehicle reached near Kaarekalpalaya, within the jurisdiction of Nalamangala Police Station, the claimant has applied sudden brake due to sudden entry of a two-wheeler in the road, hence the vehicle lost control and hit on the tree in the left hand side of the road and was capsized. Due to which, the claimant had sustained injuries and for treatment, he was admitted in to the hospital. After, the claimant discharged from the hospital, filed a claim petition against the owner and insurer of the aforesaid vehicle under section 163-A of Motor Vehicles Act, 1988.

4. The first respondent is the owner of the vehicle has contested the claim and filed counter and supported the case of the claimant that due to negligent riding of a rider of unknown two-wheeler, who suddenly crossed the road, the claimant has applied brake which resulted in the accident. Whereas, the second respondent-Insurance Company has filed counter and contended that the accident had happened due to the negligent driving of the claimant herein and he has also admitted more number of persons in the vehicle than the permitted capacity of the vehicle which is a violation of policy condition, hence the second respondent is not liable to pay any compensation to the claimant and prays to dismiss the claim petition.

5. Before the Tribunal, on the side of the claimant, P.W.1 and P.W.2 were examined and Exs.P1 to P9 were marked, on the side of the respondents, R.W.1 was examined and Exs.R1 to R7 were marked.

6. Based on the evidences placed on record, the Tribunal has held that the accident was not occurred due to the negligent act on the part of the claimant and he is entitled to get compensation from the respondent and awarded Rs.1,90,000/- along with interest @ 7.5% per annum from the date of filing of petition till the date of realization as compensation.

7. Aggrieved over the award, the Insurance Company of the vehicle has filed this appeal contending that the claimant himself is a tortfeasor for his own fault. He can only claim compensation under policy, if the coverage is available. In this case, there is no coverage for the driver i.e., the claimant herein and also the facts itself is sufficient to show that there is no involvement of any third party vehicle in the accident and the claimant is not entitled to claim any compensation and the Tribunal has wrongly awarded compensation.

8. The learned counsel for the claimant submitted that the Insurance Company has failed to prove that the accident had occurred due to the negligent act of the claimant, hence, in the absence of such proof, the claimant is entitled for compensation under section 163-A of Motor Vehicles Act.

9. Admittedly, the case of the claimant is that while he was driving

Mahindra Armado Jeep in the road, he applied sudden brake and hit on the tree, and sustained injury. This shows that there is no involvement of any third party vehicle in the accident. The legal issue that whether the tortfeasor himself is entitled to claim compensation U/s.163-A of the Motor Vehicles Act, 1988 is no longer res-integra. In ***Ramkhiladi and another vs. United India Insurance Company and another [2020 (2) SCC 550]*** Apex Court 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.

10. Such being the legal provision and there is a specific pleading made by the Insurance Company that the claimant himself is responsible for the accident, the Tribunal ought to have given a finding after discussing the evidence placed on record. But the Tribunal has erred in holding that, since petition is filed U/s. 163-A of the Motor Vehicles Act, the Tribunal not considering the contention of the insurance company is not proper. Ex.P.1 – F.I.R. Shows that a criminal case was registered against the claimant in Nalamangala Police Station in Crime No. 806 of 2003, under sections 279, 337, 338 and 304(A) of IPC, which also shows that due to negligent act of the claimant, some other persons also sustained injury and succumbed to death.

11. According to claimant, due to rain at the time of occurrence, he was not able to control the vehicle and hence hit on the tree on the left side of the road and capsized. He has also stated that passengers in the vehicle have also sustained injuries. This shows that, without any third party vehicle involvement, the accident had taken place. Ex.R.1-policy copy was also marked before the Tribunal to show that there was no coverage for the claimant herein to get compensation. This Court is of the view that, as help by Apex Court in ***Ramkhiladi and another vs. United India Insurance Company and another*** cited supra, the claimant being a tortfeasor, he is not entitled to claim any compensation, since there is no involvement of any third party vehicle.

12. Accordingly, the Civil Miscellaneous Appeal filed by the Insurance Company is allowed. The Award and Decree passed by the Tribunal in M.C.O.P.No.249 of 2005 is hereby set aside. The Insurance

Company is permitted to withdraw the compensation amount if any, already deposited in M.C.O.P.No.249 of 2005. There shall be no order as to costs.

12.09.2023

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

To:

1. The Sub Judge,
   Motor Accident Claims Tribunal,
   Hosur.

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

K. RAJASEKAR, J.,

stn

C.M.A. No. 2417 of 2017

12.09.2023