IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.11.2023

CORAM :

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

C.M.A.No.2445 of 2017
and
CMP.No.13288 of 2017

The Oriental Insurance Co. Ltd.,
"Oriental House", II Floor,
New No.216, Old No.115,
Prakasam Salai, Broadway,
Chennai – 600 108. ...Appellant

Vs.

1. D.Bhavani
2. L.Devaraj
3. V.Babu ...Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree made in M.C.O.P.No.2284 of 2011 dated 10.01.2017 on the file of the Motor Accidents Claims Tribunal, Special Sub Court No.II, Court of Small Causes, Chennai.

For Appellant : Mr.P.Kandasamy

For Respondent : No Appearance, for R1 & R2
: Batta Due, for R3

JUDGEMENT

Aggrieved by the award passed by the Motor Accidents Claims Tribunal, Special Sub Court No.II, Court of Small Causes, Chennai in M.C.O.P.No.2284 of 2011 dated 10.01.2017, the insurer has come up with this Appeal.

2. The case of the appellant is that, the 1st and 2nd respondents have filed a claim petition claiming a compensation of Rs.15,00,000/- on the ground that, on 17.02.2010 at about 22.30 hours, when the deceased Raghuram was riding the motor cycle bearing Regn.No.TN-20-V-0375 in Ambattur Puzhal road in front of M.R.Suppliers Shop, as an unknown car which was going in front of the motor cycle driven by the deceased, suddenly applied break without indication, in order to avoid hitting the car, the deceased turned the motor cycle to the right and hit the center median wall, as a result of which, the deceased was thrown away from the motor cycle and sustained fatal injuries all over his body and succumbed to the same. Thereby, the 1st and 2nd respondents/claimants, being the dependants of the deceased Raghuram, filed a claim petition claiming a compensation for the death of their son. After contest, the

tribunal, vide impugned judgment awarded a compensation of Rs.1,83,800/- and fastened the entire liability as against the appellant/ insurance company. Aggrieved by the said order, the appellant had come up with this appeal questioning the liability of the insurer.

3. Learned counsel for the appellant submitted that, the above said accident happened solely due to the rash and negligent driving of the deceased, for which, the FIR came to be registered as against the deceased. Further, the deceased having stepped into the shoes of the owner of the vehicle, the claimants of the deceased cannot claim compensation from the insurer of the motor cycle, when the deceased had been held to be driving the vehicle in a rash and negligent maner. It is the further submission of the learned counsel that, in the absence of impleading the owner and insurer of the car, the claim petition filed by the dependants of the deceased is not maintainable against the insurer of the motor cycle driven by the deceased. While so, without appreciating the same, the tribunal, vide impugned judgment awarded a compensation of Rs.1,83,800/- and fixed the entire liability as against the appellant, which is erroneous and the same has to be interfered with. He further

relied upon the decision of the Honb'le Apex Court in the case of ***Ramkhiladi and Ors Vs. The United India Insurance Company and Ors.*** in ***Civil Appeal No. 9393 of 2019*** dated ***07.01.2020***, wherein the Apex Court has held as 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 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."

4. Though the matter was adjourned repeatedly, even today, when the matter was taken up for hearing, there was no representation on behalf of the 1st and 2nd respondents. However, considering the period of pendency of the appeal, this Court is inclined to dispose of the same based on the material documents placed on record.

5. A perusal of the materials available on record reveals that, the deceased while trying to avoid hitting the car, lost his control and hit

against the median in the center of the road and sustained fatal injuries. The Ex.P2, FIR registered by the Law enforcing agency clearly reveals that the accident had occured due to the rash and negligent driving of the deeased. The claim petition has been filed by the claimants under Section 163-A of the Motor Vehicles Act, 1988 (in short 'MV Act'). It is to be pointed out that, the owner as well as the insurer of the car have not been arrayed as a party in the claim petition and the claim has been made against the insurer of the motor cycle, which the deceased was riding. When a claim is made against the own insurer of the vehicle driven by the deceased, the accident having been committed by the deceased, the deceased becomes the Tort-feasor and as such for his neglect and default, no compensation can be claimed from the insurer.

6. In the case on hand, the deceased having stepped into the shoes of the owner of the vehicle, partakes the character of the owner and therefore, the accident having been committed due to the rash and negligent driving by the deceased, the claimants cannot maintain a claim petition against the insurer of the moto cycle driven by the deceased.

7. The aforesaid view of this Court finds favour in the decision of the Apex Court in the case of ***Ramkhiladi and Ors Vs. The United India Insurance Company and Ors.*** relied upon by the learned counsel for the appellant and the tribunal without adverting to the legal issue coupled with the documentary evidences has erroneously awarded the compensation, which requires interference.

8. Accordingly, the appeal is allowed in the aforesaid terms and the impugned award passed by the tribunal in M.C.O.P.No.2284 of 2011 dated 10.01.2017 is set aside. The appellant-insurance company is permitted to seek withdrawal of the award amount, if any deposited by them by filing necessary application before the Tribunal. There shall be no order as to costs in the present appeal. Consequently, the connected Miscellaneous petition is closed.

02.11.2023
(1/2)

skt

Index : Yes / No
Speaking order : Yes / No
NCC : Yes / No

M.DHANDAPANI, J.

skt

To

1.The Motor Accidents Claims Tribunal, Special Sub Court No.II,
Court of Small Causes, Chennai.

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

C.M.A.No.2445 of 2017
and
CMP.No.13288 of 2017
(1/2)

02.11.2023