



C.M.A. No. 3415 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.08.2023

CORAM:

THE HONOURABLE MR.JUSTICE K.RAJASEKAR

C.M.A. No. 3415 of 2017

and

C.M.P. No. 21699 of 2017

M/s. Tata AIG General Insurance Company Ltd.,
118/6, No.3, Kruba Complex,
Rajaji Road,
Salem-7.

.... Appellant / 2nd Respondent

Vs.

- | | | |
|----|------------------|---|
| 1. | Chitra | |
| 2. | K. Soundararajan | ... Respondents / Claimants |
| 3. | Rajesh Kumar | ... Respondent / 1 st Respondent |

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 to set aside the decree and judgement dated 12.08.2017 made in M.C.O.P. No. 1606 of 2014, on the file of the Motor Accident Claims Tribunal (Special District Court), Salem.

For Appellant	:	Mr. K. Vinod
For RR 1 & 2	:	Mr. A. Sundaravadhanam
For R3	:	Give up

JUDGMENT



C.M.A. No. 3415 of 2017

This Civil Miscellaneous Appeal has been filed by the Insurance Company challenging the award, whereby the Tribunal, fixed liability on the Insurance Company to pay compensation on behalf of the first respondent in the award dated 12.08.2017 in M.C.O.P. No. 1606 of 2014 on the file of the Motor Accident Claims Tribunal, Special District Court, Salem.

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

3. The case of the claimants is that the deceased herein namely, Gowthamaraj was driving the two wheeler namely, Pulsar motorcycle, bearing Registration No.TN-34-R-1707, along with his friends viz., Boopathi and Karthikeyan as pillion riders on 10.07.2014 at about 03.30 p.m., on Mallasamudram Kallakudai-Shenbagamadevi road, while they reached near Chinna Vadugampalayam main road, near agricultural land belongs to one Suresh, the deceased lost his control and hit on the tree, resulting in causing death to the rider of the two wheeler on the spot. In this regard, a criminal case was filed in Crime. No.134 of 2014, under Sections 279, 337 and 304-A of I.P.C was registered on the file of the



C.M.A. No. 3415 of 2017

Mallasamudram Police Station. Hence the claimants have filed claim petition before the Tribunal claiming compensation for a sum of Rs.25,00,000/-.

4. The first respondent therein is the owner of the two wheeler has not contested the claim and was remained ex-parte. The second respondent is the insurer of the two wheeler has contested the claim and filed counter and contended that the deceased himself is a tortfeasor and F.I.R in Crime. No.134 of 2014 was also registered against the rider of the motorcycle i.e., the deceased was travelled. Hence, the deceased is not entitled to claim any compensation, since, he stepped into the shoes of the owner and he is not a third party.

5. Based on the evidences placed on record, the Tribunal in Point No.1 has held that the rider of the two wheeler i.e., the deceased Gowthamaraj has driven in rash and negligent manner and caused the accident. In Point No.2, the Tribunal has quantified the compensation and awarded a sum of Rs.10,47,000/- to the claimants.

6. The learned counsel for the appellant - Insurance Company has



submitted that while the deceased Gowthamaraj, along with two others were travelled in the two wheeler, the deceased lost his control, hit on the tree and succumbed to the injuries on the spot. The Tribunal has also held that the deceased was died only due to his own negligent driving and he is only responsible for the accident. The Tribunal has not considered the settled principles of law that the deceased drove the vehicle negligently and caused the accident and succumbed to the injuries and thereafter termed as stepped into the shoes of the owner and hence, the claimants are not entitled to claim compensation for the negligent driving of the deceased. Being the tortfeasor, the deceased is not eligible for any compensation as per Section 166 of the Motor Vehicles Act. Even if it is accepted that the petition filed by the claimants under Section 163(A) of the Motor Vehicles Act. It is also settled law as per the judgment of the Hon'ble Apex Court in ***Ramkhaladi and another vs. United India Insurance Company and another [2020 (2) SCC 550]***, the claim petition filed by the claimants is not maintainable.

7. The learned counsel for the respondents-claimants has submitted that the Tribunal, after considering the factual aspects has held that the deceased has contributed only 50% to the accident and therefore, the



Tribunal has rightly held that the claimants are entitled for compensation as per Section 163(A) of the Motor Vehicles Act, 1988. The Tribunal has rightly awarded compensation and prays to confirm the award.

8. The question relating to the entitlement of compensation by a tortfeasor by invoking under section 163 (A) of the Motor Vehicle Act is no longer *res-integra* as per the judgments of the Hon'ble Supreme Court in ***Ningamma and Ors. Vs. United India Insurance Co. Ltd. [2009 ACJ 2020]*** and in recent judgement of Hon'ble Apex in ***Ramkhiladi and another vs. United India Insurance Company and another [2020 (2) SCC 550]***.

9. ***Ramkhiladi and another vs. United India Insurance Company and another*** cited supra, Hon'ble Apex Court considered the scope of claim petition filed under Section 163-A of the Motor Vehicles Act by the tortfeasor/ owner of the vehicle in paragraph 9.5 and 9.6, 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



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C.M.A. No. 3415 of 2017

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.”

10. Hon'ble Apex Court has further accepted its previous judgement in ***Oriental Insurance Co. Ltd. vs. Rajini Devi and others [2008 ACJ 1441]*** and concurred that, liability under 163-A of the Motor Vehicles 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 163-A.

11. In this case, the deceased has ridden the two-wheeler along with his friends viz., Boopathi and Karthikeyan as pillioners on 10.07.2014 at about 03.30 p.m., on Mallasamudram Kallakudai-Shenbagamadevi road, the deceased lost his control and hit on the tree resulted in causing death to the rider. The claimants have filed claim petition against the owner and insurer of the two wheeler. The deceased herein steps into the shoes of owner and his legal heirs herein are not entitled to claim compensation for the tortious act of the claimant U/s. 163 (A) of Motor Vehicles Act, as held by the Apex Court in ***Ram Khiladi case*** cited supra.



C.M.A. No. 3415 of 2017

WEB COPY 12. In the result, the Civil Miscellaneous Appeal is allowed. The Award and Decree passed by the Tribunal in M.C.O.P.No.1606 of 2014, dated 12.08.2017, on the file of the Motor Accidents Claims Tribunal, Special District Court, Salem, is hereby set aside. There shall be no order as to costs. Consequently, connected miscellaneous petition stands closed.

23.08.2023

stn

Index: Yes/No

Speaking Order: Yes/No

Neutral Citation Case: Yes/No

To:

1. The Special District Judge,
Motor Accident Claims Tribunal,
Salem.
2. The Section Officer,



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V.R. Section,
High Court,
Chennai.



C.M.A. No. 3415 of 2017

K. RAJASEKAR, J.

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C.M.A. No. 3415 of 2017

C.M.A. No. 3415 of 2017

23.08.2023