IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.12.2023

CORAM:

THE HONOURABLE MR. JUSTICE K. RAJASEKAR

C.M.A. No. 1915 of 2021

S. Santharaj ... Appellant / Petitioner

Vs.

1. B. Samuel Nesaraj

2. National Insurance Company Limited,
Motor Third Party Claims Office,
No.751, Anna Salai,
Chennai - 600 002. ... Respondents / Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and decree dated 01.08.2019 passed in M.A.C.T.O.P. No. 2019 of 2014 on the file of the II Judge, Motor Accident Claims Tribunal, II Court of Small Causes, Chennai.

For Appellant	:	Mr. F. Terry Chella Raja
For R1	:	No Appearance
For R2	:	Mr. D. Bhaskaran

JUDGMENT

This Civil Miscellaneous appeal has been filed by the claimant challenging the dismissal of claim petition awarded in M.A.C.T.O.P. No. 2019 of 2014, dated 01.08.2019 on the file of the II Judge, Motor Accident Claims Tribunal, II Court of Small Causes, Chennai.

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

3. On 28.01.2014, at about 16:15 hours, the claimant was riding a motorcycle bearing Registration No.TN-37-CE-2259 on the Gandhi Mandapam road, while he reached near Anna University outer gate, motorcycle hit a pit in the middle of the road and skidded, due to which the claimant was thrown out and sustained grievous injuries. A case was registered in Cr.No.122/AM3/2014 U/s. 279, 337 of IPC on the file of J2, Adyar Traffic Investigation, Besant Nagar, Chennai. For the injuries sustained, the claimant has filed claim petition seeking compensation for a sum of Rs.27,10,000/- under section 163-A of the Motor Vehicles Act, 1988.

4. The first respondent, who is the owner of the motorcycle

bearing Registration No.TN-37-CE-2259 has not contested the claim and remained ex-parte. The second respondent – insurance company has filed a counter and denied the manner of the accident and further stated that FIR was registered belatedly after a period of 17 days from the date of accident. The insurance company also contended that after investigation, in the charge sheet, it is categorically stated that the claimant himself is a tortfeasor, who has ridden the motorcycle in rash and negligent manner and hit on the center median and invited the accident, hence prays to dismiss the claim petition.

5. Before the Tribunal, on the side of the claimant P.W.1 to P.W.4 were examined and Exs.P.1 to P.15 were marked. On the side of the respondent, R.W.1 was examined and Exs.R.1 to R.5 were marked.

6. Based on the evidence placed on record, the Tribunal in point no.1, has held that the claimant himself is a tortfeasor, who has ridden the motorcycle in a rash and negligent manner and invited the accident, hence the petition filed under section 163(A) of the Motor Vehicles Act is not maintainable and dismissed the claim petition.

7. Aggrieved over the dismissal of claim petition, the claimant has filed this appeal.

8. The learned counsel appearing for the claimant has submitted that under section 163-A of the Motor Vehicles Act, no negligence need to be proved and not withstanding any other provision in the act or any other act. A special scheme has been granted under 163-A for granting compensation without proving the negligent. He further submitted that the Tribunal without considering the fact that even though, there is no third party involvement in the accident and on no fault liability the claimant is entitled to get compensation, hence prays to set aside the award of the Tribunal. In support of his contention, he relied on the judgment of Hon'ble Apex Court in ***Shivaji and another vs. Divisional Manager, United India Insurance Co. Ltd & others [CDJ 2018 SC 817]*** and judgment of this Court in ***IFFCO-TOKIO General Insurance Company Ltd., vs. S. Ilangovan and Another [CDJ 2018 MHC 5168].***

9. Per contra, the learned counsel for the insurance company submitted that the Tribunal based on the evidences placed on record has

rightly rejected the claim petition, hence prays to confirm the award.

10. Heard the submissions made on both sides and perused the materials available on record:

11. In this case, the claimant while travelling in a two wheeler ran over a pit and skidded on the road, thereby sustained injuries. The accident has taken place without involvement of any third party vehicle, hence the Tribunal has held that the claimant himself is a tortfeasor and the claim petition filed by the claimant invoking section 163-A of the Motor Vehicles Act is not maintainable and rejected the same.

12. Scope of awarding compensation under section 163-A of the Motor Vehicles Act to the rider of the two wheeler for the injuries sustained by him, without involvement of any third party vehicle was considered by the Apex Court in ***Ram Khiladi and another vs. the United India Insurance Co. Ltd. and another [2020 (1) TNMAC 1 (SC)],*** has held when the rider of the two wheeler steps into the shoes of the owner of the vehicle, in paragraph 9.5 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 qua third party only. In the present case, as observed herein above, 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 vs. New India Assurance Co. Ltd.,[(2004) 8 SCC 553], 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."

13. The above observation has been followed in several judgments of this Court. The claimant has relied on the Apex Court judgment of

Shivaji and another vs. Divisional Manager, United India Insurance Co. Ltd & others [CDJ 2018 SC 817] in support of their case, wherein in the said case, the claim is made by the driver of the vehicle, who is not a burrower of the vehicle, he was an employee of the owner of the vehicle therein, hence the Apex Court has held that the driver, who has been employed by the owner of the vehicle is entitled to get compensation under no fault liability and based on the insurance coverage, the compensation was awarded. This Court judgement in ***IFFCO-TOKIO General Insurance Company Ltd., vs. S. Ilangovan and Another [CDJ 2018 MHC 5168]*** has been passed prior to the judgment of the Apex Court in ***Ram Khiladi and another vs. the United India Insurance Co. Ltd. and another case*** cited supra, hence the judgment of the Apex Court prevails over the same.

14. This Court in number of judgments has followed the ***Ram Khiladi and another*** judgement and this Court in ***United India Insurance Co. Ltd., vs. B. Sudha and others in C.M.A. No.660 of 2015***, dated 05.03.2020 in paragraph 10 and 12 held as follows:

> *"10. This Court is of the considered opinion that the Insurance Company as well as the Policy Holders are bound by the terms and conditions of the contract agreed between*

the parties. In the event of superseding the terms of contract, then the very legality of the Low of Contract is sacrificed under the provisions of the Indian Contract Act, which is unacceptable and therefore, in respect of the contract, Courts are bound to consider the terms and conditions and the binding clauses between the parties.

...

12. Perusal of the judgment, it is crystal clear that the scope of Section 163-A of the Act cannot be expanded, so as to cover borrower of the vehicle, who stepped into the shoes of the registered owner and file claim petition under Section 163-A of the Act. In the event of entertaining such claim petition, undoubtedly, the other provisions namely, Section 147 and other related provisions would get defeated and the object sought to be reached through Special Provision under Section 163-A of the Act, would also be defeated. Thus the fact remains that in all such cases, where a vehicle was borrowed from the registered owner by any person and such vehicle met with an accident and the rider of the vehicle sustained injury or it resulted in death, then no claim petition is entertained under Section 163-A of the Act and even in cases of claim of Personal Accident Policy (not a statutory coverage in terms of Section 147 of the Act), then also the mandatory conditions under the Personal Accident Policy are to be established by the claimant. This being the principles to be followed, this Court is of the considered opinion that in the present case, the claim petition is unsustainable and not entertainable and liable to be rejected."

15. The learned counsel for the appellant also relied on the Division Bench judgment of this Court in ***S. Shantha and another vs.***

C.Kumarasamy and others in ***C.M.A. No.1268 of 2022, dated 14.12.2023***, wherein this Court has considered the definition of the 'Owner' under section 2(30) of the Motor Vehicles Act, 1988, which reads as follows:

> *"2(30): 'owner' means a person in whose name a motor vehicle stands registered, and where such person is a minor, the guardian of such minor, and in relation to a motor vehicle which is the subject of a hire-purchase, agreement, or an agreement of lease or an agreement of hypothecation, the person in possession of the vehicle under that agreement."*

16. Based on the above observation, Court has held that the person, who has the physical possession of the vehicle is not the actual owner of the vehicle. In this case, the claimant herein has not come forward to claim compensation treating himself as 'Owner', whereas he is the borrower of the vehicle at the time of accident. As held in the judgment of ***Ram Khiladi and another vs. the United India Insurance Co. Ltd. and another*** cited supra, the claimant who is a tortfeasor himself, is not entitled to claim compensation under section 163-A of the Motor Vehicles Act, hence the appeal filed by the claimant is liable to be dismissed.

17. In the result, this Civil Miscellaneous Appeal is dismissed. No cost.

22.12.2023

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

To:

1. The II Judge,
   Motor Accident Claims Tribunal,
   II Court of Small Causes, Chennai.

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

K. RAJASEKAR, J.

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