IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **17.11.2023**

CORAM:

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

C.M.A.No.3986 of 2019
and
C.M.P.No.22534 of 2019

The Divisional Manager, Tata AIG General Insurance Company Limited, Claims Team, 2nd Floor, Samsung Towers, 403-L, Pethran Road, Egmore, Chennai – 600 008. ... Appellant

Vs.

1. S.Priya
2. Minor S.Dharshini
3. Minor S.Tamil
   Minor respondent, represented by guardian and mother Priya
4. R.Vasantha
5. R.Murugan ...Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the decree and judgment dated 8th day of March, 2018, made in M.C.O.P.No.1238 of 2016 on the file of Motor Accident Claims Tribunal, (Special Sub Court), Cuddalore.

For Appellants : Mr.Vinod

ForRespondents : Mr.N.Keerthana for M/s.M.Ramy.V.Rao for R1 to R4

JUDGEMENT

The appeal is preferred by the claimants against the decree and judgment dated 8th day of March, 2018, made in M.C.O.P.No.1238 of 2016 on the file of Motor Accident Claims Tribunal, (Special Sub Court), Cuddalore.

2. It is the case of the appellant / insurance company that on 30.11.2012, when the deceased was riding the motorcycle belonging to the fifth respondent bearing Regn.No.TN 32 H 3030, at that time a moped bearing Regn.No.TN 31 E 0667 which came in the opposite direction dashed the vehicle driven by the deceased, due to which the deceased was succumbed to death. Claiming compensation in a sum of Rs.25,00,000/- the claimants have filed the claim petition.

3. Before the Tribunal, the claimants examined two witnesses viz., P.W.1 and P.W.2 and marked Ex.P.1 to Ex.P.6. On the side of the respondents they examined R.W.1 and marked Ex.R1. After adjudication, the Tribunal awarded a sum of Rs.6,09,500/- as compensation by

fastening the entire liability as against the appellant /insurance company. Aggrieved by the same, the appellant has filed the present appeal.

4. The learned counsel appearing for the appellant / insurance company submitted that, the deceased is a borrower of the vehicle from the registered owner. He further submits that the deceased consumed alcohol while driving the vehicle, which itself clearly shows that the 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 after consumption of alcohol in a rash and negligent manner. It is the further submission of the learned counsel that, in the absence of impleading the owner and insurer of the offending vehicle, the claim petition filed by the dependants of the deceased u/s.163 (A) of the Motor Vehicles Act, 1988 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.6,09,500/- 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."

5. The learned counsel appearing for the respondent 1 to 4 / claimants fairly submitted that as the respondents 1 to 4 / claimants have not impleaded the owner and insurer of the offending vehicle, they prayed this Court, to permit respondents 1 to 4 to file another claim petition before the Tribunal, for impleading the owner and insurance company of the offending vehicle by setting aside the award passed in

M.C.O.P.No.1238 of 2016.

6. Heard the learned counsel appearing for the appellants and the learned counsel appearing for the respondents 1 to 4 and perused the materials placed on record.

7. In view of the fair submission made by the learned counsel appearing for the respondents 1 to 4 / claimants, the Award passed by the Tribunal in M.C.O.P.No.1238 of 2016 is set aside and the appeal is allowed with liberty to the respondents 1 to 4 / claimants to file a claim petition as against the owner and insurer of the offending vehicle. The appellant is directed to withdraw the entire amount if any deposited by them to the credit of M.C.O.P.No.1238 of 2016 within a period of two (2) weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

17.11.2023

Index : Yes / No
speaking Order : Yes / No
Neutral Citation Case : Yes / No
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To

1.Motor Accident Claims Tribunal, (Special Sub Court), Cuddalore.
2.The Section Officer, V.R. Section, High Court, Madras.

M.DHANDAPANI,J.,

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