IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.11.2023

CORAM:

THE HONOURABLE MR. JUSTICE K. RAJASEKAR

C.M.A. No. 2162 of 2021
and C.M.P. No. 11994 of 2021

Oriental Insurance Company,
Rep. by its Branch Manager,
Sri Vijai Complex, 2nd Floor,
Theni Town and Taluk. ... Appellant / 2nd Respondent

Vs.

1. Abdul Rasheed Sabirulla ... Respondent / Petitioner

2. Jaffer Ali ... Respondent / 1st Respondent

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and decree dated 24.04.2018 passed in M.C.O.P. No.101 of 2014 on the file of the Principal Sub Judge, Motor Accident Claims Tribunal, Mayiladuthurai.

For Appellant	:	M/s. Elveera Ravindran
For R1	:	M/s. S. Vasavi Sridevi
For R2	:	NA

JUDGMENT

This Civil Miscellaneous appeal has been filed by the insurance company challenging the liability fixed to pay compensation to the claimant awarded in M.C.O.P. No.101 of 2014, dated 24.04.2018 on the file of the Principal Sub Judge, Motor Accident Claims Tribunal, Mayiladuthurai.

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

3. The case of the claimant is that on 03.08.2013, he was returning from Mayiladuthurai by driving a car bearing Registration No.TN-31-R-7623, which belongs to the first respondent, while he reached near Thirumangalam Petrol Bunk, a cow suddenly crossed and entered middle of the road and in order to avoid hitting of the cow, he has turned the car towards the left hand side of the road and lost control, dashed on the road side tree and sustained grievous injuries. After treatment, the claimant has come forward with a claim petition seeking compensation for a sum of Rs.50,00,000/- under section 163-A of the Motor Vehicles Act, 1988. A criminal case was also registered in Cr.No.106 of 2014 U/s. 279, 337 of

I.P.C. on the file of Kuthalam Police Station, against the claimant herein.

4. The first respondent is the owner of the car bearing Registration No.TN-31-R-7623 has not contested the claim and remained ex-parte. The second respondent - insurance company, insurer of the car has filed a counter and contended that the accident was taken place without involvement of any third party vehicle, and accident had taken place due to his negligence act. The insurance company further disputed the age, income, occupation of the claimant and contended that the compensation claimed under various heads is on the higher side, 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.28 were marked. On the side of the respondent, no witnesses were examined and no exhibits 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 and the accident was taken place only due to his negligence and in point no.2, the Tribunal has

quantified and granted compensation for a sum of Rs.11,28,000/- along with interest @ 7.5% per annum from the date of filing of petition till the date of realization. In point no.3, the Tribunal has held that both the first and second respondent are jointly and severely liable to pay compensation to the claimant.

7. Aggrieved over the award of the Tribunal, the insurance company has filed this appeal challenging the liability fixed on them to pay the compensation to the claimant.

8. The learned counsel appearing for the insurance company has submitted that the claimant was employed in a private concern at Saudi Arabia and the claimant used the car bearing Registration No.TN-31-R-7623, which belongs to the first respondent for his own purpose and travelled along with his family in the car at the date of occurrence. For claiming compensation, the claimant claims that he works as a driver, under the first respondent. The Tribunal has not properly appreciated the evidences placed on record and fixed the liability on the insurance company and indemnify the first respondent, hence prays to set aside the award of the

Tribunal.

9. Per contra, the learned counsel appearing for the claimant submitted that there is a categorical pleading made by the claimant that he was the driver engaged by the first respondent and the evidence was also placed on record to show that the claimant is an employee of the first respondent. As a driver of the first respondent, preferred claim against the insurance company. The learned counsel also submitted that the Tribunal based on the evidence has rightly held that the insurance company is liable to pay the compensation to the claimant, hence prays to confirm the award.

10. I have considered the submissions made on both sides and perused the materials available on record.

11. In the claim petition, the claimant has not pleaded that he was a driver engaged by the first respondent to drive the car and only at the stage of recording of evidence, the claimant has deposed that he was engaged as a driver, by the first respondent. On perusal of the evidence placed on record, it shows that the claimant was working as a driver in a private concern

situated in Saudi Arabia and he had returned to India prior to accident. On the day of occurrence, he travelled along with his wife, sons, daughter, niece and wife of the first respondent in the car and the same was also recorded in Ex.P.1 - FIR, which was lodged immediately after the accident. These facts shows that at the time of accident, the claimant has travelled along with his family members in the car, which belongs to the first respondent.

12. The P.W.4, who is the first respondent and owner of the car bearing Registration No.TN-31-R-7623 also stated that he is working as manager and the claimant was working as a driver in a Private company at Saudi Arabia. He further stated that whenever the claimant come to India, the claimant used to take his car and use it for his personal purpose, similarly, prior to the accident, his vehicle was taken by the claimant and no where it is stated that he has engaged the claimant, as his driver. This evidence of P.W.4 clinchingly shows that the claimant was not at all engaged as a driver by the first respondent.

13. Similarly, the fact that entire family members of the claimants were travelled in the car only shows that the claimant used the car belongs

to the first respondent for his personal purpose and not as a driver engaged by the first respondent. This Court is of the view that all the above facts established was not properly appreciated by the Tribunal and, without any evidence, the Tribunal has proceeded as if the claimant was engaged by the first respondent as a driver, which is not proper. Accordingly, the finding rendered by the Tribunal is hereby set aside and the claimant is not an employee of first respondent and he steps into the shoes of owner of the vehicle.

14. It is also the admitted case that the claimant himself has caused the accident without involvement of any third party vehicle, hence the claim petition filed under section 163-A is not maintainable as per the judgment of the Hon'ble Apex Court in vz***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."

15. As held by Apex Court in ***Ram Khiladi case*** cited supra and as per the discussions made supra, the claim made by the claimant, under section 163-A is not maintainable. Accordingly, the insurance company is absolved from paying compensation to the claimant and the award of the

Tribunal is hereby set aside.

16. In the result, this Civil Miscellaneous Appeal is allowed. Consequently, connected civil miscellaneous petition stands closed. No cost.

29.11.2023

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

To:

1. The Principal Sub Judge,
   Motor Accidents Claims Tribunal,
   Mailaduthurai.

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

K. RAJASEKAR, J.

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