BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.12.2023

CORAM

THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

C.M.A.(MD)No.263 of 2022

1.Sankaranarayanan

2.Sankararasu ...Appellants

/Vs./

1.Santhanamariappan

2.The Branch Manager,
The Oriental Insurance Company Limited,
Door No.24E12A, Sivasakthi Shoppoing Complex,
Swamy Nellaiappar High Road,
Tiruneveli Town & District. ...Respondents

PRAYER**:-** Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the judgment and decree passed by the Motor Vehicle Accident Claims Tribunal (Sub Court), Sankarankovil in MCOP No.78 of 2013 on 27.02.2019 and allow this civil miscellaneous appeal.

For Appellants :Mr.M.Jothi Basu
For Respondents :Mr.E.Chandrasekaran (R2)
No appearance(R1)

JUDGMENT

Challenging the dismissal of MCOP No.78 of 2013 dated 27.02.2019 passed by the Motor Vehicle Accident Claims Tribunal (Sub Court), Sankarankovil, this civil miscellaneous appeal has been filed.

2. The appellants filed the claim petition in MCOP No.78 of 2013 seeking compensation of Rs.30,00,000/- for the death of their son Ponsekar in a road accident. They stated in the claim petition that when the deceased Ponsekar was riding a two-wheeler bearing Registration No.TN 76-L-3798 on 25.05.2013 from Surandai to Sankarankovil near Thalavaipuram busstand, a dog suddenly crossed the road and as a consequence, the two-wheeler skidded and he fell down. As a result, Ponsekar suffered head injury and later, he died. He was working as a Civil Engineer and earning a sum of Rs.25,000/- per month. He was contributing moral and financial support to the appellants. Because of his sudden demise, the appellants are grieved and find it very difficult to live. They lost his monetary support. Therefore, the claim petition has been filed.

3. The respondents contested the claim petition stating that the deceased was earning more than Rs.40,000/- per month and therefore, the petition under Section 163A of the Motor Vehicles Act, 1988 (hereinafter referred to as 'Act' for brevity) cannot be maintained. That apart, the accident had happened because of the negligence of the deceased himself and his parents cannot claim any compensation.

4. During the enquiry, PW1 was examined and Exs.P1 to P13 were marked. R.W.1 was examined and Ex.R1 was marked. Considering the evidence on record, the learned Tribunal Judge dismissed the petition stating that the deceased himself had committed the accident. The tort-feasor or his legal heirs cannot claim any compensation. That apart, the claim petition filed under Section 163A of the Act could be filed only in cases, where the deceased was earning less than Rs.40,000/- per annum. But in the instant case, it was claimed that the deceased was earning a sum of Rs.25,000/- per month. For those reasons, the Tribunal dismissed the claim petition. Challenging the dismissal, this appeal is filed.

5. The learned counsel appearing for the appellants submitted that the Motor Vehicles Act is a beneficial legislation. The deceased met with an accident while using the motor vehicle in a public road. The motor vehicle was insured with the second respondent insurance company. The primary object of the Motor Vehicles Act is to ensure that in motor accidents cases, reasonable and fair compensation shall be paid. Thus, he prayed for setting aside the order of the Tribunal and prayed for fair compensation.

6. In alternative, the learned counsel appearing for the appellants submitted that the appellants are entitled atleast for the statutory coverage amount, which was due to the owner, in case owner met with an accident and died.

7. In reply to the learned counsel appearing for the appellants, the learned counsel appearing for the second respondent insurance company submitted that the deceased had borrowed the vehicle from the first respondent and the deceased was himself responsible for the accident and his death. He cannot be a tort-feasor and the claimants therefore cannot claim compensation for the accident caused by the rash and negligent riding of the deceased himself using the borrowed vehicle. The tribunal had rightly dismissed the petition and hence he prayed for dismissal of this appeal.

8. I have considered the rival submissions and perused the records. From the oral and documentary evidence produced, it is not in dispute that the deceased Ponsekar had met with an accident on 25.05.2013, while riding a two wheeler bearing Reg.No.TN-76-L-3798. This vehicle belonged to the first respondent. The deceased had borrowed the vehicle from the first respondent. The deceased, while driving the vehicle, a dog suddenly crossed and that resulted in accident and he died. This case is squarely covered by the decision of ***Ramkhiladi & Anr. v. The United India Insurance Company & Anr.*** reported in ***2020 (2) SCC 550***, it is held in this judgment as follows:-

> *"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.

5.7 Now, so far as the reliance placed upon by the learned Advocate for the claimants on the decision of this Court in the case of Naveen Kumar (supra), on considering the issue involved in that decision, we are of the opinion that the said decision shall not be applicable to the facts of the case on hand and/or the same shall not be of any assistance to the claimants. In that case, the issue was as to who could be said to be the registered owner of the vehicle and the liability of the owner who sold the vehicle, but his name continued to be as the owner with the registering authority. To that, it was held that the person in whose name the motor vehicle stands registered is the owner of the vehicle for the purpose of the Act.

5.8 However, at the same time, even as per the contract of insurance, in case of personal accident the ownerdriver is entitled to a sum of Rs.1 lakh. Therefore, the deceased, as observed hereinabove, who would be in the shoes of the owner shall be entitled to a sum of Rs.1 lakh, even as per the contract of insurance. However, it is the case on behalf of the original claimants that there is an amendment to the 2 nd Schedule and a fixed amount of Rs.5 lakh has been specified in case of death and therefore the claimants shall be entitled to Rs.5 lakh. The same cannot be accepted. In the present case, the accident took place in the *year 2006 and even the Judgment and Award was passed by the learned Tribunal in the year 2009, and the impugned Judgment and Order has been passed by the High Court in 10.05.2018, i.e. much prior to the amendment in the 2nd Schedule. In the facts and circumstance of the present case, the claimants shall not be entitled to the benefit of the amendment to the 2 nd Schedule. At the same time, as observed hereinabove, the claimants shall be entitled to Rs. 1 lakh as per the terms of the contract of insurance, the driver being in the shoes of the owner of the vehicle.*

5.9 Now, so far as the submission made on behalf of the claimants that in a claim under Section 163A of the Act mere use of the vehicle is enough and despite the compensation claimed by the heirs of the owner of the motorcycle which was involved in the accident resulting in his death, the claim under Section 163A of the Act would be maintainable is concerned, in view of the decision of this Court in Rajni Devi (supra), the aforesaid cannot be accepted. In Rajni Devi (supra), it has been specifically observed and held that the provisions of Section 163A of the Act cannot be said to have any application with regard to an accident wherein the owner of the motor vehicle himself is involved. After considering the decisions of this Court in the cases of Oriental Insurance Co. Ltd. V. Jhuma Saha (2007) 9 SCC 263; Dhanraj (supra); National Insurance Co. Ltd. V. Laxmi Narain Dhut (2007) 3 SCC 700 and Premkumari v. Prahlad Dev (2008) 3 SCC 193, it is ultimately concluded by this Court that the liability under Section 163A of the 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 163A of the Act. It is further observed that, for the said purpose, only the terms of the contract of insurance could be taken recourse to. In the recent decision of this Court in the case of Ashalata Bhowmik (supra), it is specifically held by this Court that the parties shall be governed by the terms and conditions of the contract of insurance. Therefore, as per the contract of insurance, the insurance company shall be liable to pay the compensation to a third party and not to the owner, except to the extent of Rs.1 lakh as observed hereinabove.*

6. In view of the above and for the reasons stated above, the present appeal is partly allowed to the aforesaid extent and it is observed and held that the original claimants shall be entitled to a sum of Rs.1 lakh only with interest @ 7.5 per cent per annum from the date of the claim petition till realization. In the facts and circumstance of the present case, there shall be no order as to costs."

As per the judgment, the claimants are entitled to claim only Rs.1,00,000/-, that is, the insurance coverage given to the owner of the vehicle.

9. In this view of this matter, the order passed by the Motor Vehicle Accident Claims Tribunal (Sub Court), Sankarankovil in MCOP No.78 of 2013 dated 27.02.2019 is confirmed and this civil miscellaneous appeal is dismissed. However, the second respondent insurance company is directed to pay a sum of Rs.1,00,000/- (Rupees One Lakh only) to the claimants with interest at the rate of 7.5% from the date of filing of the claim petition. On such deposit being made, the appellants / claimants are permitted to withdraw the award amount by filing formal application before the Tribunal. No Costs.

13.12.2023

Index:Yes/No
NCC:Yes/No
sm

To:

1.The Motor Vehicle Accident Claims Tribunal (Sub Court),
Sankarankovil.

2.The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

G.CHANDRASEKHARAN, J.

sm

Judgment made in
C.M.A(MD)No.263 of 2022

Dated:
13.12.2023