BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON	**20.11.2023**
PRONOUNCED ON	**12 .12 .2023**

CORAM:

THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

C.M.A(MD)No.142 of 2021
and
C.M.P.(MD) No.1208 of 2021

Branch Manager,
IFFCO-Tokio General Insurance Company Ltd.,
Thirunelveli. ... Appellant

.vs.

1.Suromani
2.Stephen
3.Priya
4.Priyanka
5.Mariyappan ... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the M.V.Act, 1988, to set aside the judgment and decree dated 19.10.2019 passed in MCOP.No.93 of 2015 on the file of the Additional Motor Accident Claims Tribunal and Additional Subordinate Judge, Tenkasi.

For Appellant :Mr.V.Sakthivel
For R1 to R4 :Mr.D.Srinivasa Raghavan
For R5 :No appearance

JUDGMENT

This appeal is filed challenging the liability to pay the compensation by the Insurance Company/the appellant herein.

2.The respondents/claimants filed MCOP.No.93 of 2015 seeking compensation of Rs.50,00,000/- for the death of one Raj @ Ranmon in a road accident on 08.12.2014. It is stated in the claim petition that the deceased was riding a two wheeler bearing Reg.No.TN 76 F 0714 near AG Church from north-south direction in Ilathur to Senkottai Main Road. At that time, a dog suddenly crossed the road and in order to avoid hitting the dog, he applied the sudden break. As a result, he lost balance, fell down and sustained injuries. He was given treatment from 08.12.2014 to 10.12.2014 in Subbulakshmi Nursing Home. Despite giving treatment, he died on 10.12.2014. The deceased was working as Rubber Tree Milk Extractor and was earning a sum of Rs.3,250/-. The claimants are his wife and children. Due to his sudden death, the claimants find it very difficult to meet their day-to-day requirements. They lost the financial and moral support from the deceased. Thus, the claim petition.

3.The respondent filed a counter affidavit stating that the deceased was a borrower of a motor vehicle. He borrowed the motor vehicle from the owner and met with an accident because of his fault. The borrower of the motor cycle, died in a road accident, because of his own fault, is not entitled to claim compensation under the Motor Vehicles Act, 1988. The accident had happened only because of his rash and negligent riding of the two wheeler. The compensation claimed is also excessive.

4.During enquiry before the Tribunal, P.W1 was examined and Ex.P1 to Ex.P6 were marked. R.W1 and R.W2 were examined on the side of the respondent and Ex.R1 was marked.

5.On considering the oral and documentary evidence, the learned Tribunal on the premise that the deceased can be considered only as a third party found that the claimants are entitled for claiming compensation. In this view of the matter, the learned Tribunal directed the appellant/Insurance Company to pay a sum of Rs.12,10,520/- towards compensation. This award is under challenge now.

6.The learned counsel appearing for the appellant submitted that the deceased himself was responsible for the accident by riding the borrowed vehicle. If the owner is responsible for the accident, he cannot claim compensation. On the same logic, the claimants cannot claim compensation for the accident caused by the rash and negligent riding of the deceased himself using the borrowed vehicle.

7.As per Section 163A of the Motor Vehicles Act, 1988, if the income of the deceased is more than Rs.40,000/-, the claim cannot be maintained. The learned Tribunal erroneously fixed the income of the deceased at Rs.8,000/- per month. In support of this submission, he pressed into service the judgment of the Hon'ble Supreme Court in ***Ramkhiladi and others Vs. The United India Insurance Company and others*** reported in ***(2020) 2 SCC 550***.

8. In reply, the learned counsel for the respondents submitted that this Court in a similar circumstances held that the claimants are entitled for compensation. He pressed into service the judgment of the Hon'ble Supreme Court of India in ***Shivaji and another vs. Divisional Manager, United India Insurance Co. Ltd., and Others*** reported in ***AIR 2018 SC 3705.***

9.Considered the rival submissions and perused the records.

10.There is no dispute with regard to the fact that the deceased borrowed the two wheeler from the 5th respondent, met with an accident and died. It is settled proposition of law that in a claim under 163A of the Motor Vehicles Act, 1988, it is not open to the insurer to raise the defence of negligence on the part of the victim. However, the question involved in this case is whether the borrower of the vehicle, who had stepped into the shoes of the owner, can claim compensation for the fault of his own. In ***Ramkhiladi and Ors Vs. United India Ins.Com.Ltd***., reported in ***(2020) 2 SCC 550***, it is observed in paragraph Nos.5.6 and 5.9 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.*
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> ....
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> *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."*

11. The above said judgment is very clear and categorical that the borrower of the vehicle has stepped into the shoes of the owner and for his death, his legal representatives cannot claim compensation from the insurer of the owner. At best the respondents/claimants can claim only the amount contracted under personal accident coverage ie., Rs.1,00,000/-.

12. In the judgment relied by the learned counsel for the respondents, based reliance on the judgment of Hon'ble Supreme Court in ***Shivaji and another vs. Divisional Manager, United India Insurance Co. Ltd., and Others*** reported in ***AIR 2018 SC 3705,*** the judgment relates to a proposition that in a proceedings under Section 163A of the Motor Vehicles Act, 1988, the insurer cannot raise any defence of negligence on the part of the victim to counter a claim for compensation. There, the accident happened between two vehicles. The driver of a car dashed against a Truck resulting in his death. The claim petition was filed by the legal heirs of the deceased driver. The Tribunal allowed the claim. In appeal, the High Court held that the driver was a tortfeasor and responsibile for the accident and held that compensation could

not be awarded to the appellants. When the matter was taken to the Hon'ble Supreme Court, the Hon'ble Supreme Court held that when the claim petition was filed under Section 163A of the Motor Vehicles Act, 1988, the insurer cannot raise any defence of negligence on the part of the victim.

13. However, in the case befor hand, the deceased was not engaged by the owner as a driver. He borrowed the two-wheeler from his owner, hit a dog crossing the road, fell down and died of the injuries. In the aforesaid case, two vehicles involved. But in the case on hand, only one vehicle was involved. That was the vehicle ridden by the deceased. Therefore, the judgment relied on by the learned counsel for the respondent, cannot be made applicable to this case.

14. At the risk of repetition, it is held in ***Ramkhiladi's*** case that for the death of the deceased/borrower of vehicle, who has stepped into the shoes of the owner, his legal representatives cannot claim compensation under Section 163A of the Motor Vehicles Act, 1988.

15. In this view of the matter, the award, dated 19.10.2019, passed in MCOP.No.93 of 2015 on the file of the Additional Motor Accident Claims

Tribunal and Additional Subordinate Judge, Tenkasi, is set aside and this Civil Miscellaneous Appeal is allowed. Resultantly, M.C.O.P.No.93 of 2015 on the file of the Additional Motor Accident Claims Tribunal and Additional Subordinate Judge, Tenkasi, is dismissed. However, the appellant is directed to pay Rs.1,00,000/-(Rupees One Lakh Only) to the respondents 1 to 4/claimants with interest at the rate of 7.5% per annum from the date of filing of the claim petition till the date of payment. No Costs. Consequently, connected Miscellaneous Petition is closed.

Index :Yes/No
Internet :Yes/No
NCC :Yes/No

12 . 12 .2023

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To

1.The Additional Motor Accident Claims Tribunal and
Additional Subordinate Judge, Tenkasi.

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

G.CHANDRASEKHARAN,J.

mm/pm

Pre-delivery Judgment made in
C.M.A(MD)No.142 of 2021

12.12.2023