BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **18.12.2023**

CORAM:

THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

C.M.A(MD)No.722 of 2021

1.Baby

2.Minor Sabari

3.Minor Sai Naveen

(Petitioners 2 and 3 are represented
through their mother and natural guardian
Baby/the first petitioner)

4.Narayanan

5.Lakshmi ... Appellants

.vs.

1.Balamurugan

2.The Divisional Manager,
New India Assurance Company Ltd.,
Pillars Gate,
Opposite to Anna Stadium,
Nagerkoil ... Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173(1) of Motor Vehicles Act, to set aside the order dated 26.02.2021 passed by the Motor Accident Claims Tribunal (Special Sub Judge), Tirunelveli in M.C.O.P.No.802 of 2018 in so far fixing liability on the first respondent and direct the second respondent to pay the compensation awarded in the claim application.

For Appellant : Mr.T.Lenin Kumar

For R2 : Mr.D.Sivaraman

For R1 : No appearance

JUDGMENT

This Civil Miscellaneous Appeal is filed challenging the order passed by the Motor Accident Claims Tribunal /Special Subordinate Judge, Tirunelveli in M.C.O.P.No.802 of 2018 dated 28.02.2021.

2.The appellants are the claimants. They filed the claim petition seeking compensation for the death of one Nagarajan in a road accident. On 30.11.2017 at about 11.00 a.m., the deceased was riding a Pasion Plus Motorcycle bearing Registration No.TN-74-Q-2668 belonging to the first respondent insured with the second respondent along with his mother-in-law Kuppammal as pillion rider. When the motorcycle reached near North Arasankuzhi, the vehicle hit against the Xylo bearing registration No.TN-07-BC-2550. Due to which the deceased was thrown out of the motorcycle and sustained injuries and died of the injuries. The appellants are the wife and children of the deceased. Because of his sudden demise, the claimants find it difficult to live and thus, claimed a compensation of Rs.4,62,840/-.

3.The respondents opposed the claim petition stating that the deceased had borrowed the vehicle from the first respondent and he was responsible for the accident. Therefore, the appellants herein are not entitled for any compensation.

4. During enquiry, on the side of the claimants, P.W.1 was examined and Ex.P1 to Ex.P5 were marked. On the side of the respondents, R.W.1 and R.W.2 were examined and Ex.R1 was marked.

5. On going through the oral and documentary evidence, the learned Tribunal awarded compensation of Rs.5,00,000/- and directed the first respondent to pay compensation. Challenging the liability fastened on the first respondent, the claimants filed this appeal.

6. The learned counsel for the appellants submitted that the learned Tribunal should have fixed the liability on the Insurance company and not on the owner of the vehicle.

7. In response, the learned counsel for the Insurance Company submitted that the Insurance Company cannot be fastened with the liability for the reason that the deceased had borrowed the vehicle from the first respondent. He was responsible for the accident. The tort-feasor cannot claim compensation for his own wrong doing.

8. Considered the rival submissions and perused the records.

9. The only point which requires for consideration of this Court is,

"Whether the Insurance Company can be made liable to pay the compensation on behalf of the first respondent?"

10.From the oral and documentary evidence produced, it is not in dispute that the deceased had borrowed the motorcycle bearing Registration No.TN-74-Q-2868 from its owner, namely, the first respondent and met with an accidental death at about 11.00 am on 30.11.2013, when he hit the vehicle bearing Registration No.TN-07-BC-2550. The First Information Report was registered against the deceased and final report was also filed against him. The deceased was himself responsible for the accident and therefore, the legal heirs of the deceased cannot claim compensation against the Insurance Company. This Court finds that the learned Tribunal directed the owner of the vehicle to pay compensation to the claimants. This, according to this Court, is not correct and proper. The reason is that the deceased had taken vehicle of the owner and met with an accident. For lending the vehicle, the owner cannot be made responsible for paying the compensation. At best, the claimants are entitled to only Rs.1,00,000/-, which is covered under the personal accident coverage for the owner of the vehicle. This has been so held in the ***Ramkhiladi and another Vs United Insurance Company Limited and another*** reported in ***2020 (1) TNMAC 1 (SC).*** The relevant portion of the judgment reads as follows:-

> *"9.6 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.

9.7 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.

9.8 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.*

9.9 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. In the said circumstances, the order of the learned Special Subordinate Judge, Tirunelveli, passed in M.C.O.P.No.802 of 2018 is set aside and it is held that the appellants are entitled to recover only a sum of Rs.1,00,000/- with interest at 7.5% from the date of petitions from the Insurance Company, which is payable to the owner under the policy. With the above modification, this Civil Miscellaneous Appeal is allowed in part. No costs.

18.12.2023

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

The Motor Accident Claims Tribunal/
Special Sub Judge,
Tirunelveli.

G.CHANDRASEKHARAN,J.

cp

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