



C.M.A(MD)No.233 of 2018

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 12.09.2023

Delivered on : 22.09.2023

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

C.M.A(MD)No.233 of 2018

and

C.M.P.(MD)No.3439 of 2018

The Manager,
National Insurance Company Limited,
East Raja Veethi,
Pudukkottai.

: Appellant/2nd Respondent

Vs.

1.Pichaikannu

2.Minor.Anand Kumar

3.Minor.Ashok Kumar

4.Minor.Bhavani

: Respondents/Petitioners

4.Palanivel

: Respondent/1st Respondent

(Minor respondents 2 to 4 are represented
by their mother 1st respondent)

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, to set aside the fair and decreetal order, dated



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19.02.2010 made in M.C.O.P.No.10 of 2005 on the file of the Motor Accident Claims Tribunal (Additional District and Sessions Court/Special Court), Pudukkottai.

For Appellant : Mr.S.Srinivasaraghavan

For Respondents : No Appearance

J U D G M E N T

The Civil Miscellaneous Appeal is directed against the award passed in M.C.O.P.No.10 of 2005, dated 19.02.2010, on the file of the Motor Accident Claims Tribunal (Additional District and Sessions Court/Special Court), Pudukkottai.

2. The appellant/insurer, who was made liable to pay compensation of Rs.50,000/- with interest at 7.5% per annum to the respondents 1 to 4/claimants for the death of one Selvam, consequent to an accident occurred on 27.02.2004, challenged the liability mulcted on it.

3. Admittedly, the first respondent/1st claimant is the wife and the respondents 2 to 4/claimants 2 to 4 are the children of the deceased Selvam.



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4. The case of the claimants is that on 27.02.2004, the deceased Selvam, who was working as a Noon Meal Organizer at Velrampatti Village, Viralimalai, after attending the work, was returning in the two wheeler bearing Registration No.TN-55-J-1577 and at the place near Vilampatti Thannerpanthal, he was found lying on the road with bleeding injuries; that immediately he was taken to the Government Hospital, Trichy and that despite the treatment, he succumbed to the injuries on 08.03.2004 and that on the basis of the complaint lodged by the first claimant, F.I.R., came to be registered in Crime No.30 of 2004, on the file of the Annavasal Police Station and after the death of the said Selvam, the case was altered into Section 304(A) IPC.

5. The defence of the appellant/second respondent is that the Accident Register recorded at Pudukottai Government Hospital discloses that the deceased had fallen down by himself; that the Medical Officer has also noticed Alcohol smell with the injured; that the deceased after consuming Alcohol had proceeded in the two wheeler, lost his balance and fell down by his own negligence, that the deceased was not possessing valid driving license at the time of accident; that the fourth respondent/first respondent by allowing the deceased to drive the two wheeler without driving license and



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by consuming Alcohol, has violated the policy conditions and that therefore, the appellant/second respondent is not liable for the claim.

6. During enquiry, the claimants have examined the first claimant as P.W.1 and one Natarajan as P.W.2 and exhibited seven documents as Ex.P.1 to Ex.P.7. The appellant/second respondent-insurer has examined its Official as R.W.1 and exhibited three documents as Ex.R.1 to Ex.R.3.

7. The learned trial Judge, upon considering the evidence both oral and documentary and on hearing the arguments of both the sides, has passed the impugned judgment, dated 19.02.2010, holding that the deceased without driving license and by consuming Alcohol had driven the two wheeler and fell down by himself and sustained injuries, has come to the decision that the claimants are entitled to get Rs.50,000/- under Section 140(2) of Motor Vehicles Act.

8. The learned counsel for the appellant would submit that the deceased is the tort-feaser, who had caused the accident by his own negligence by drunken driving; that the deceased has also stepped into the shoes of the owner of the vehicle as he had borrowed the vehicle at the time



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of accident and therefore, the legal representatives of the deceased are not entitled to claim any compensation; that the deceased was not a third party as he has borrowed the vehicle from the owner of the vehicle and as such, the Tribunal was not justified in granting compensation even under Section 140 of Motor Vehicles Act; that the Tribunal was also not justified in taking into account the non-obstante clause of Section 163-A of Motor Vehicles Act in deciding the issue of liability; that the entire approach of the Tribunal as to the scope of ambit of Section 163-A of Motor Vehicle Act, is not correct and that since the deceased had invited the accident by his own negligence and drunken driving, the insurer cannot be made liable.

9. The points for consideration are :

(i) Whether the Tribunal erred in mulcting liability on the appellant/insurer, despite the production of evidence to show that the deceased was the tort-feaser as he had caused the accident by his own negligence and by drunken driving and without driving license ?

(ii) Whether the impugned award, dated 19.02.2010, is liable to be interfered with ?



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WEB COPY 10. It is pertinent to note that the claimants have filed the above claim petition as usual under many of the provisions of Motor Vehicles Act. i.e., 140, 141, 142, 163A, 163B, 166, 182A of the said Act. In the claim petition, the claimants have themselves stated that the deceased was found lying in the road with bleeding injuries. When the injured was admitted in the Pudukkottai Government Hospital, the accident register came to be recorded that at about 03.00 pm, in Elluppur to Keeranur road, the injured had fallen down by himself and that they have found Alcohol smell. When the injured was admitted in Government Medical College Hospital, Trichy, it has been stated in accident register under Ex.R.3 that the injured was alleged to have fallen from the two wheeler on 27.02.2004 at about 04.00 pm.

11. Considering the evidence available on record, the Tribunal has rightly observed that there was evidence to infer that the injured had driven the two wheeler in drunken state.

12. As rightly pointed out by the learned counsel for the appellant, in Ex.P.2/Motor Vehicle's Inspection Report, it has been specifically stated that the driving license of the deceased was not produced. P.W.1/wife of the



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deceased in her evidence would say that she was not aware as to her husband was having valid driving license and that despite her search, she could not find out the driving license in their home. Considering the above, the Tribunal has rightly observed that the claimants have miserably failed to prove that the deceased was possessing valid driving license at the time of accident.

13. Admittedly, no other vehicle was involved in the accident. Considering the evidence available on record, the finding of the Tribunal that the deceased was the tort-feasor cannot be found fault with. At this juncture, it is necessary to refer the judgment of the Hon'ble Supreme Court in ***Ningamma and another Vs. United India Insurance Company Limited*** reported in 2009 (2) TN MAC 169 (SC):

“13. In the light of the aforesaid submissions, the question that falls for our consideration is whether the legal representatives of a person, who was driving a motor vehicle, after borrowing it from the real owner meets with an accident without involving any other vehicle, would be entitled to Compensation under Section 163A of MV A or under any other provision(s) of law and also whether the Insurer who issued the Insurance Policy would be bound to indemnify the deceased or his legal representative?.....



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18. In the case of *Oriental Insurance Company Ltd. v. Rajni Devi and Others*, (2008) 5 SCC 736, wherein one of us, namely, Hon'ble Justice S.B. Sinha is a party, it has been categorically held that in a case where third party is involved, the liability of the insurance company would be unlimited. It was also held in the said decision that where, however, compensation is claimed for the death of the owner or another passenger of the vehicle, the contract of insurance being governed by the contract qua contract, the claim of the claimant against the insurance company would depend upon the terms thereof. It was held in the said decision that Section 163-A of the MVA cannot be said to have any application in respect of an accident wherein the owner of the motor vehicle himself is involved. The decision further held that the question is no longer res integra. The liability under section 163-A of the MVA is on the owner of the vehicle. So a person cannot be both, a claimant as also a recipient, with respect to claim. Therefore, the heirs of the deceased could not have maintained a claim in terms of Section 163-A of the MVA. In our considered opinion, the ratio of the aforesaid decision is clearly applicable to the facts of the present case. In the present case, the deceased was not the owner of the motorbike in question. He borrowed the said motorbike from its real owner. The deceased cannot be held to be employee of the owner of the motorbike although he was authorised to drive the said vehicle by its owner, and therefore, he would step into the shoes of the owner of the motorbike.



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20. When we apply the said principle into the facts of the present case we are of the view that the claimants were not entitled to claim compensation under Section 163-A of the MVA and to that extent the High Court was justified in coming to the conclusion that the said provision is not applicable to the facts and circumstances of the present case. However, the question remains as to whether an application for demand of compensation could have been made by the legal representatives of the deceased as provided in Section 166 of the MVA. The said provision specifically provides that an application for compensation arising out of an accident of the nature specified in sub-section (1) of [section 165](#) may be made by the person who has sustained the injury; or by the owner of the property; or where death has resulted from the accident, by all or any of the legal representatives of the deceased; or by any agent duly authorised by the person injured or all or any of the legal representatives of the deceased, as the case may be. When an application of the aforesaid nature claiming compensation under the provisions of [Section 166](#) is received, the Tribunal is required to hold an enquiry into the claim and then proceed to make an award which, however, would be subject to the provisions of [Section 162](#), by determining the amount of compensation, which is found to be just. Person or persons who made claim for compensation would thereafter be paid such amount. When such a claim is made by the legal representatives of the deceased, it has to be proved that the



deceased was not himself responsible for the accident by his rash and negligent driving. It would also be necessary to prove that the deceased would be covered under the policy so as to make the insurance company liable to make the payment to the heirs."

14. It is also necessary to refer the following decisions :

(1) CMA.No. 4858 of 2019 dated, 09.10.2020

[Joyesmarry and another vs. Velumani and others]

13. Once it has been decided that the accident had taken place due to the negligence of the deceased, the question which arises for consideration is whether in such circumstances, the second respondent insurance company is liable to pay compensation to the claimants. The liability of the insurance company is to the extent of indemnification of the insured against the injured person, a third party or in respect of damages to property. The insurer is not liable to indemnify the insured if the accident had taken place where the insured himself was driving the vehicle and due to his negligence accident had taken place. The Hon'ble Supreme Court in Oriental Insurance Company Ltd., Vs. Jhuma Saha (Smt) and Ors reported in (2007) 9 SCC 263 has held as follows:

"10. The deceased was the owner of the vehicle. For the reasons stated in the claim petition or otherwise, he himself was to be blamed for the accident. The accident did not involve motor vehicle other than the one which he was driving, the question which arises for consideration is that the deceased himself being negligent, the claim petition under Section 166 of the Motor Vehicles Act, 1988, would be maintainable.

11. Liability of the insurer – Company is to the extent of indemnification of the insured against the



respondent or a injured person, a third person or in respect of the damages of property. Thus, if the insured cannot be fastened with liability under the provisions of Motor Vehicles Act, the question of the insurer being liable to indemnify insured, therefore, does not arise.”

14. The above judgment has also been followed by the Hon'ble Supreme Court in the decision in National Insurance Co. Ltd., vs. Ashalata in Bhowmik and Ors reported in 2018(9) SCC 801, wherein at paragraph No.8 it has been held as follows:

8. This Court in Oriental Insurance Co. Ltd., Vs. Jhuma Saha (Smt) and Ors (2007) 9 SCC, 263 was considering a similar case where the owner himself was driving the vehicle which due to his negligence dashed with a tree on the roadside as a result of which he died. The Court held that the claim petition filed by his LRs was not maintainable.

15. In the instant case, it is the owner of the vehicle who met with the accident due to his own negligence and therefore, the insurance company is not liable to pay any compensation to the claimants.”

(2) 2020(2) TNMAC 753 :

Manager, New India Assurance Company Ltd., vs. Vinayagamoorthy and another:

“Motor Vehicles Act. 1988 (59 of 1988), Sections 166, 165, 163-A and 140 – Maintainability of Claim Petition under Section 166, when claimant is tortfeasor – Claimant / R1 driving Car belonging to R2/ owner with his wife and two minor children as occupants in Car – claimant drove Car, against flood water on bridge in a rainy day – Car swept away with its occupants in flood and wife and two children died – Claim petition filed by Claimant /



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R1 under Section 166 as a Legal Heir – Claimant, being a tortfeasor himself, cannot claim compensation for his own fault – Nor owner / R2 and Insurer can be held vicariously liable to pay compensation erred in allowing Claim Petition and awarding compensation – Claim under Section 163-A also not maintainable – Tribunal ought to have restricted Compensation under Section 140 – Claimant entitled to Rs.1,50,000/- (Rs.50,000/- x 3) as compensation under Section 140 – Appellant / Insurer directed to deposit Rs.1,50,000/- with interest at 7.5% p.a within period of 6 weeks.”

15. The above decisions are squarely applicable to the case on hand. As already pointed out, the deceased Selvam alone has driven the two wheeler and due to his driving alone, he fell down and sustained injuries. Admittedly, the vehicle was belonging to the fifth respondent/first respondent and there existed no relationship of employer-employee between the fifth respondent/first respondent and the deceased. Even according to the claimants, the deceased borrowed the two wheeler from the fifth respondent and was using the same.

16. Considering the above, it can be easily inferred that the deceased has stepped into the shoes of the owner of the vehicle ie., fifth respondent/first respondent. Applying the legal position above referred, this Court has no hesitation to hold that the petition filed under Sections 166 or 163(A) of the Motor Vehicles Act, is not maintainable.



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17. But in the case on hand, Ex.R.1 is a package policy and admittedly, the premium for personal accident coverage for owner/driver was paid at Rs.50/- and the liability is shown as Rs.1,00,000/-. Generally, as per the contract of insurance, in case of personal accident, the owner-cum-driver is entitled to the amount agreed under the contract.

18. At this juncture, it is necessary to refer the Judgment of the Hon'ble Supreme Court reported in **2020 (2) SCC 550 (Ramkhiladi and another Vs. United India Insurance Company Ltd., and another)**, and whereunder, it has been observed that as per the Contract of Insurance, in case of personal accident, the owner cum driver is entitled to the amount stipulated and that the deceased who would be in the shoes of the owner of the vehicle, shall be entitled to the amount as per the terms of contract of Insurance. In the present case, as already pointed out, Ex.R1 package policy, personal accident coverage is given to the owner cum driver of the vehicle to go to the extent of Rs.1,00,000/- and since the deceased being the person stepped into the shoes of the owner of the vehicle, he can also be entitled some amount.



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19. In the case on hand, as already pointed out, the deceased had driven the vehicle in drunken state and moreover, he was not possessing valid driving license at the time of accident. Since the deceased Selvam had driven the vehicle without valid driving license and in drunken state and that the personal accident coverage is covered by terms of the contract, the claimants are not entitled to invoke personal accident coverage. In view of the violation of policy condition, the claimants are not entitled to get any amount even under the contract of insurance. But the Tribunal, without considering the above aspects in proper perspective, has awarded Rs.50,000/- by invoking Section 140(2) of the Motor Vehicles Act and as such, the same is liable to be interfered with. Hence, this Court has no hesitation to hold that the impugned award, which is legally unsustainable, is liable to be set aside. Considering the other facts and circumstances of the case, this Court further decides that the parties are to be directed to bear their own costs and the above points are answered accordingly.

20. In the result, this Civil Miscellaneous Appeal is allowed and the impugned award, dated 19.02.2010 passed in M.C.O.P.No.10 of 2005 on the file of the Motor Accident Claims Tribunal (Additional District and Sessions Court/Special Court), Pudukkottai, is set aside and the claim petition stands



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dismissed. The appellant/insurer is permitted to withdraw the amount, if any deposited. The parties are directed to bear their own costs. Consequently, connected Miscellaneous Petition is closed.

22.09.2023

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

To

1.The Motor Accident Claims Tribunal,
(Additional District and Sessions Court/Special Court),
Pudukkottai.

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



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K.MURALI SHANKAR,J.

das

Pre-delivery order made in
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and
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22.09.2023