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C.M.A.No.720 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

**DATED : 04.12.2024**

CORAM :

**THE HONOURABLE MR. JUSTICE M. DHANDAPANI**

**C.M.A.No.720 of 2020**

**and**

**C.M.P.No.4405 of 2020**

M/s.TATA AIG General Insurance Company Limited,  
Branch Office  
'Samsung Towers' II floor,  
No.403-L, Pantheon Road,  
Egmore, Chennai – 600 008.

... Appellant

Vs.

1.Dhivya

2.Annadurai (Died)

[R2 died and R1 (who is already on record) is recorded as LR of the deceased R2 viz., Annamalai as per memo dt.2.7.24 and vide Court order dt.10.07.2024 made in C.M.A.No.720 of 2020 & C.M.P.No.4405 of 2020]

3.Saravanan

... Respondents

**Prayer:** Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Decree and Judgment dated 01<sup>st</sup> August, 2019, passed in M.C.O.P.No.1535 of 2016, by the Motor Accidents Claims Tribunal, (Additional District Court), Namakkal.



C.M.A.No.720 of 2020

For Appellant : Mr.J.Michael Visuvasam

For Respondents : Mr.C.Thangaraju [R1]  
Died (Steps taken) [R2]  
No appearance [R3]  
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### **JUDGMENT**

Challenging the award passed by the Motor Accidents Claims Tribunal, (Additional District Court), Namakkal in M.C.O.P.No.1535 of 2016 dated 01.08.2019, the insurance company has preferred the above appeal.

2. The petitioners are the wife and father of the deceased Kamalakannan. On 09.04.2016 at about 4.45 p.m. at Cheyyar to Kanchipuram Road near Palli Village, when the deceased was riding a motorcycle bearing Regn.No.TN-25-AV-5495, which was owned by the 1<sup>st</sup> respondent, on the left side of the road, in a moderate speed, he hit the dale on the road and caused the accident, due to which, he sustained grievous injuries all over the body including head injury and taken first-aid at GH Cheyyar and then, shifted to Ramachandra Hospital, Chennai for further treatment, however, on the way, he died on GH, Kanchipuram. Thereafter, the claimants filed a claim petition claiming a sum of



C.M.A.No.720 of 2020

Rs.20,00,000/- as compensation under various heads for the death of the deceased.

3. Before the Tribunal, the 1<sup>st</sup> claimant had examined herself as P.W.1 and marked 13 documents viz., Ex.P.1 to Ex.P.13. On the side of the respondents, they have examined two witnesses viz., R.W.1 and R.W.2 and marked 2 documents viz., Ex.R.1 and Ex.R.2. After adjudication, the Tribunal passed an award awarding a sum of Rs.7,04,700/- as compensation in favour of the claimants. Challenging the same, the insurance company is before this Court by way of the present appeal.

4. Learned counsel appearing for the appellant/insurance company submitted that, in the cases of *Ramkhiladi and Ors Vs. The United India Insurance Company and Ors.* and *Ningamma & Anr. Vs. United India Insurance Co. Ltd.*, reported in **2020 (1) CTC 443** and **2009 (2) TN MAC 169**, the Apex Court held that if the deceased is not owner of the motorcycle and if he borrowed the motorcycle from the real owner, the deceased cannot be held to be an employee or owner of the motorcycle although he was an authorised driver of the motorcycle.



C.M.A.No.720 of 2020

Section 163A of the Act clearly states that the liability to pay the compensation upon the owner of the vehicle, the owner cannot both be a claimant and a tort-feasor, therefore, the legal representatives of the deceased, who had steps into the shoes of the owner of the motorcycle would not claim compensation u/s the 163A of the Act. In view of the above categorical decision rendered by the Apex Court, which was followed by the learned single judge of this Court in the case of ***National Insurance Co. Ltd., Puducherry Vs. Rani & 5 Ors.*** reported in ***2020 (1) TN MAC 593***, the award passed by the Tribunal necessarily has to be set aside. Accordingly, he prays for allowing the appeal.

5. Learned counsel appearing for the 1<sup>st</sup> respondent submitted that, the motorcycle owned by the third respondent was driven by the deceased and he unfortunately hit the dale on the road and lost his life. By considering all the oral and documentary evidence, the Tribunal had rightly awarded a sum of Rs.7,04,700/-, which is wholly sustainable and the same does not require any interference. Accordingly, he prays for dismissal of the appeal.



C.M.A.No.720 of 2020

6. Heard the learned counsel for the appellant and the learned counsel appearing for the 1<sup>st</sup> respondent and also perused the materials available on record.

7. Admittedly, the respondents 1 and 2 are the dependants of the deceased and the deceased driven the motorcycle and hit the big dale on the road and thereby, he lost his life. Thereafter, the respondents 1 and 2 filed claim petition before the Tribunal and the Tribunal has passed the award in favour of the respondents 1 and 2.

8. The issue arises in the present appeal is whether the respondents 1 and 2/legal representatives of the deceased are entitled to step into the shoes of the owner for claiming compensation u/s 163A of MV Act.

9. If the legal representatives of the deceased had stepped into the shoes of the owner of the vehicle, they cannot claim compensation u/s 163A of MV Act. The Apex Court has elaborately considered the very same aspect in the case of *Ningamma & Anr. Vs. United India Insurance Co. Ltd.*, reported in *2009 (2) TN MAC 169* and relevant portion of the judgment is as follows :-



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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*



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C.M.A.No.720 of 2020

*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.*

*19. We have already extracted Section 163-A of the MVA hereinbefore. A bare perusal of the said provision would make it explicitly clear that persons like the deceased in the present case would step into the shoes of the owner of the vehicle. In a case wherein the victim died or where he was permanently disabled due to an accident arising out of the aforesaid motor vehicle in that event the liability to make payment of the compensation is on the insurance company or the owner, as the case may be as provided under Section 163-A. But if it is proved that the driver is the owner of the motor vehicle, in that case the owner could not himself be a recipient of compensation as the liability to pay the same is on him. This proposition is absolutely clear on a reading of Section 163-A of the MVA. Accordingly, the legal representatives of the deceased who have stepped into the shoes of the owner of the motor vehicle could not have claimed compensation under Section 163-A of the MVA.”*

10. In view of the above decision rendered by the Apex Court, the respondents 1 and 2/legal representatives of the deceased, who had stepped into the shoes of the owner of the vehicle is not entitled to claim



C.M.A.No.720 of 2020

any compensation u/s 163A MV Act. Hence, the appeal deserves to be allowed.

11. Accordingly, the Civil Miscellaneous Appeal is allowed and the judgment and decree dated 01.08.2019 made in M.C.O.P.No.1535 of 2016 passed by the Motor Accidents Claims Tribunal, (Additional District Court), Namakkal, is set aside. If any amount deposited by the appellant/insurance company, the appellant/insurance company is permitted to withdraw the same by filing appropriate application before the Tribunal. No costs. Consequently, the connected miscellaneous petition is closed.

**04.12.2024**

Index : Yes / No  
Speaking order / Non-speaking order  
Neutral Citation Case : Yes / No  
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To  
The Motor Accidents Claims Tribunal, (Additional District Court),  
Namakkal.



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C.M.A.No.720 of 2020

**M.DHANDAPANI, J.,**

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**C.M.A.No.720 of 2020**

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