IN THE HIGH COURT OF JUDICATURE AT MADRAS

**DATED : 20.12.2024**

CORAM :

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

**C.M.A.No.2595 of 2021**

ICICI Lombard General Insurnace Company Limited,
ICICI Lombard House,
No.414, Veer Savarkar Marg,
Near Sidhi Vinayagar Temple,
Prabhadevi, Mumbai – 400 025. ... Appellant

Vs.

1. Munilakshmi @ Munilakshmamma
2. Papparaj
   M.Ashwant (died)
3. Iffco Tokio General Insurance Company Limited,
   Iffco Sadan, CI District Centre,
   Saket, New Delhi – 110 017.
4. N.Murugesh
5. Parvathamma ... Respondents

**Prayer:** Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and decree dated 24.04.2019 made in M.C.O.P.No.187 of 2014 on the file of the Motor Accident Claims Tribunal Cum Special District Judge for Motor Accident Claims Cases, Krishnagiri.

For Appellant : Mr.K.Poomalai

For Respondents : Mr.T.Panchal Saram for R1 and R2
Mr.B.Sivakollapan for R3

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**JUDGMENT**

The above appeal is filed by the appellant / insurer of the 4th respondent's vehicle challenging the compensation awarded by the Motor Accident Claims Tribunal Cum Special District Judge for Motor Accident Claims Cases, Krishnagiri in the Judgment and decree dated 24.04.2019 in M.C.O.P.No.187 of 2014.

2. It is the case of the respondent 1 and 2 / claimants that, on 05.05.2013 at about 3:30 PM when the deceased was riding a two wheeler bearing Regn.No.TN 70 J 5681 belonging to the fourth respondent along with two others as pillion riders insured with the appellant insurance company, at that time a two wheeler bearing Regn.No.TN 70 J 1089 insured with the third respondent belonging to the fifth respondent driven by one Jayapal which came in the opposite direction along with two pillion riders came in a rash and negligent manner and dashed the vehicle in which the deceased was riding, due to

which, the deceased sustained grievous injuries all over his body and succumbed to death. Claiming compensation in a sum of Rs.15,00,000/-, the dependents of the deceased have filed the claim petition under Section 166 of the Motor Vehicles Act, 1988.

3. Before the Tribunal, the respondents 1 and 2 / claimants have examined P.W.1 to P.W.3 and marked Exs.P.1 to Ex.P.10. On the side of the appellant / insurer of the fourth respondent's vehicle and the third respondent / insurer of the offending vehicle they examined R.W.1 to R.W.3 and marked Exs.R1 to R3. After adjudication, the Tribunal awarded a sum of Rs.9,12,230/- towards compensation to be payable by the appellant / insurer of the 4th respondent's vehicle after deducting 20% contributory negligence on the part of the deceased for triple driving.

4. The learned counsel appearing for the appellant / insurer of the 4th respondent's vehicle submitted that in the present case, the deceased himself is a tort feasor, he borrowed the vehicle from the fourth respondent and drove the same in a rash and negligent manner and fell down and sustained fatal injuries, for which, the FIR, Ex.P1 came to be

registered as against the deceased and that the deceased did not possess valid license at the time of accident and he is not the owner of the vehicle. Hence, the respondents 1 & 2/claimants are not entitled to file claim petition under Section 166 of the Motor Vehicles Act.

5. Per contra, the learned counsel appearing on behalf of the 1st and 2nd respondents/claimants submitted that though the deceased borrowed the vehicle from the 4th respondent and the deceased may have lost his life due to his negligence, even then, the claimants are entitled to claim compensation under Section 166 of the Motor Vehicles Act. Thereby, the Tribunal, after careful consideration of the material documents placed before it passed the present impugned award, which cannot be said to be erroneous and accordingly, prayed for dismissal of this appeal.

6. Heard learned counsel on either side and perused the materials available on record.

7. The accident and the manner in which the accident happened

are not disputed. Admittedly, the deceased borrowed the vehicle from the fourth respondent. The issue that arise for consideration in this appeal is whether the borrower of the vehicle is entitled for compensation in terms of Section 166 of the Motor Vehicles Act.

8. The issued involved in the present case is covered by the decision of this Court reported in ***2020 (1) TN MAC 593 [National Insurance Company Limited Vs. Rani and others]***, the relevant portion of the same reads as follows:

> *"9. The recent Judgment of Hon'ble Supreme Court in the case of **Ramkhiladi and Another Vs. United India Insurance Co. Ltd and Another** [2020 (1) TN MAC 1 (SC)], elaborately discussed the scope of claim petition under Section 163 (A) of the Motor Vehicles Act. Undoubtedly, the Special Provision cannot be read in isolation and the Apex Court considered Sections 147, 166 and 163-A of the Motor Vehicles Act. Thus the Special Provision is to be read conjointly and in consonance with the object, purpose as well as the intention of the Legislature.*
>
> *10. In the event of interpreting any Special Provision in isolation to the other provisions of the Statute, then the very object would be defeated and therefore, the Courts cannot make an interpretation of a Special Provision, which is otherwise intended to grant*

*certain benefits in respect of grant of compensation in the event of not establishing negligence. Thus, this Court is of the considered opinion that, even the Personal Accident Coverage cannot be considered in certain cases, where the victim is not the registered owner of the vehicle. Three conditions are required even under Personal Accident Policy (which is not a statutory coverage in terms of Section 147 of the Act.). The said three conditions are mandatory, so as to avail compensation under the Personal Accident Policy (not a statutory coverage in terms of Section 147 of the Act). The conditions are:-*

*(a) the owner-driver is the registered owner of the vehicle insured;*

*(b) the owner-driver is the insured named in the policy;*

*(c) the owner-driver holds an effective driving license, in accordance with the provisions of Law.*

*11. With reference to Section 163-A of the Motor Vehicles Act, 1988, the Hon'ble Supreme Court has taken a view that if a borrower of the vehicle met with an accident while riding the vehicle, he cannot claim compensation under Section 163-A of the Act. The reason being in the event of granting compensation without adjudication of negligence, then the same would result in defeating the very object of the Act, under Sections 147 and 166 of the Motor Vehicles Act. When Section 147 categorically* *enumerates requirements of policies, limits and liabilities, the same cannot be whittled down, while dealing with the claim petitions under Section 163-A of the Act. All these provisions are to be read conjointly for the purpose of granting the benefit of Special Provision enacted under Section 163-A of the Act, for payment of compensation on structured formula basis. When the Special Provision is specifically provided for a structured formula basis, it cannot be read in isolation with reference to the nature of the contracted policy and the requirement of policy and limited liabilities clauses, which all are well enumerated under the provisions of the Act. Thus, this Court is of the considered opinion that a person, who borrowed a vehicle from the registered owner and while driving the same met with an accident sustained injuries or dead, then he is not entitled to claim any compensation under Section 163-A of the Act and even for claiming Personal Accident Policy (not a statutory coverage in terms of Section 147 of the Act), he is bound to establish the three mandatory conditions and in the absence of compliance with the said three conditions, he is not entitled for compensation.*

*12.This Court is of the considered opinion that the Insurance Company as well as the Policy Holders are bound by the terms and conditions of the contract agreed between the parties. In the event of superseding the terms of contract, then the very legality of the Law of Contract is sacrificed under the provisions of the Indian Contract Act, which is unacceptable and therefore, in respect of the contract, Courts are bound to consider the terms and conditions* *and the binding clauses between the parties.*

*13. The Hon'ble Supreme Court in the judgment, cited supra, in unequivocal terms held that in a claim under Section 163-A of the Act, there is no need for the claimants to plead or establish the negligence and/or that the death in respect of which the claim petition is sought to be established was due to wrongful act, neglect or default of the owner of the vehicle concerned. It is also true that the claim petition under Section 163-A of the Act is based on the Principle of 'No Fault Liability'. However, at the same time, the deceased has to be a third party and cannot maintain a claim under Section 163-A of the Act, against the owner/Insurer of the vehicle, which is borrowed by him as he will be in the shoes of the owner and he cannot maintain a claim under Section 163-A of the Act, against the owner and Insurer of the vehicle. In the case before the Hon'ble Supreme Court, the finding was that the parties are governed by the contract of Insurance and under the contract of Insurance, the liability of the Insurance Company would be qua third party only. Thus the deceased cannot be said to be a third party with respect to the insured vehicle. There cannot be any dispute that the liability of the Insurance Company would be as per the terms and conditions of the Contract of Insurance. The insurance policy covers the liability incurred by the insured in respect of death or bodily injury to any person (including an owner of the goods or his authorized representative) carried in the vehicle or damage to any property of a third party caused by or arising out of the use of the vehicle. Thus Section 147 does not require an Insurance*

> *Company to assume risk for death or bodily injury to the owner of the vehicle."*

9. A perusal of the above decision makes it clear that for claim under the personal accident coverage, the owner-driver must be the registered owner of the vehicle insured; the owner-driver is the insured named in the policy and the owner-driver holds an effective driving license, in accordance with the provisions of Law. In the present case, the deceased did not possess valid driving licence and that the deceased had borrowed the vehicle and he is not the owner of the vehicle and the insurance policy does not stand in the name of the deceased. Therefore, the personal accident coverage cannot be extended to the deceased, though he has stepped into the shoes of the owner of the vehicle, as there is no complete fulfilment of all the conditions.

10. Further, for maintaining a claim u/s 166 of the MV Act, the deceased has to be a third party. In the present case, as already held above, the deceased had stepped into the shoes of the owner of the vehicle and, therefore, he cannot be termed to be a third party to have his claim covered under Section 166 of the MV Act. Without considering

these factual and legal aspects, the Tribunal has passed award, which is not sustainable and the same has to necessarily be interfered with.

11. In view of all the above, this civil miscellaneous appeal stands allowed and the judgment and decree dated 24.04.2019 passed by the Tribunal in MCOP.No.187 of 2014 is set aside. The appellant-Insurer of the fourth respondent's vehicle is permitted to withdraw the entire amount already deposited by them, if any. However, the 1st and 2nd respondent/claimants are at liberty to workout their remedy in the manner known to law as against the 4th respondent. No costs. Consequently, the connected miscellaneous petition is closed.

**20.12.2024**

Index : Yes / No
Speaking order / Non-speaking order
Netrual Citation Case : Yes / No
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To

1. Motor Accident Claims Tribunal Cum Special District Judge for Motor Accident Claims Cases, Krishnagiri.

2.The Section Officer, V.R.Section, High Court, Madras.

**M.DHANDAPANI, J.**

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