IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.11.2024

CORAM :

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

C.M.A.No.996 of 2020 and
C.M.P.No.6265 of 2020

The Manager,
M/s.TATA AIG General
Insurance Company Limited,
Third Party Claims Office,
'Samson Towers' II floor,
No.403-L, Pantheon Road,
Egmore, Chennai – 600 008. ... Appellant

Vs.

1. S.Sampangi
2. Munusamy
3. R.Jason Jacob ... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 to set aside the decree and judgment dated 17th July, 2019, passed in M.C.O.P.No.476 of 2016 by the Motor Accidents Claims Tribunal, (In the Court of Additional District Judge), at Kanchipuram.

For Appellant : Mr.I.Michael Visusvasam

For Respondents : No appearance [R1 to R3]

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JUDGMENT

The above appeal is filed by the appellant / insurance company against the decree and judgment dated 17.07.2019, passed in M.C.O.P.No.476 of 2016 by the Motor Accidents Claims Tribunal, (In the Court of Additional District Judge), at Kanchipuram.

2. It is the case of the claimant that, on 07.04.2016 at about 8.00 pm, when the deceased, M.Thanigaivel was riding a two wheeler bearing Regn.No.TN 10 K 8997 belonging to the third respondent at that time the a lorry which came in the opposite direction with flickering lights, whileso, the deceased hit a bullock cart which was proceeding the motor cycle driven by the deceased. Thereby, the deceased succumbed to fatal injuries and died. The appellants being the parents of the deceased, have filed the claim petition seeking compensation in a sum of Rs.15,00,000/-.

3. Before the Tribunal, the claimants have examined P.W.1 and P.W.2 and marked Exs.P.1 to Ex.P.6. On the side of the respondents, they have neither examined any witnesses nor marked any exhibits. After adjudication, the Tribunal awarded a sum of Rs.5,00,000/- as compensation to the claimants. Challenging the same, the appellant /

insurance company has preferred the present appeal.

4. The learned counsel appearing for the appellant / insurance company submitted that, the deceased is a borrower of the vehicle from the registered owner. He further submits that the above said accident happened solely due to the rash and negligent driving of the deceased, for which, the FIR came to be registered as against the deceased. Further, the deceased having stepped into the shoes of the owner of the vehicle, the claimants of the deceased cannot claim compensation from the insurer of the motor cycle, when the deceased had been held to be driving the vehicle in a rash and negligent maner, the appellant is not liable to indemnify the claimants for the loss sustained by them due to the death of the deceased. It is the further submission of the learned counsel that, in the absence of impleading the owner and insurer of the offending vehicle, the claim petition filed by the dependants of the deceased u/s.163 (A) of the Motor Vehicles Act, 1988 is not maintainable against the insurer of the motor cycle driven by the deceased. While so, without appreciating the same, the tribunal, vide impugned judgment awarded a compensation of Rs.5,00,000/- and fixed the entire liability as against the appellant,

which is erroneous and the same has to be interfered with. He further relied upon the decision of the Honb'le Apex Court in the case of ***Ramkhiladi and Ors Vs. The United India Insurance Company and Ors.*** in ***Civil Appeal No. 9393 of 2019*** dated ***07.01.2020***, wherein the Apex Court has held as hereunder:-

> *"5.5. It is true that, in a claim Under Section 163A 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 163A 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 163A 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 163A of the Act against the owner and insurer of the vehicle bearing registration No. RJ 02 SA 7811. In the present case, 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. In the present case, as observed hereinabove, the deceased cannot be said to be a third party with respect to the insured vehicle bearing registration No. RJ 02 SA 7811. 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. As held by this Court in the case of Dhanraj (supra), an insurance policy covers the liability incurred by the insured in respect of death of 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. In the said decision, it is further held by this Court that Section 147 does not require an insurance company to assume risk for death or bodily injury to the owner of the vehicle.

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."

5. Though the notice was served on the respondent, no one appeared on their behalf. Considering the period of pendency of the appeal, the same is taken up for final disposal based on the materials available on record.

6. Heard the learned counsel appearing for the appellant and perused the materials available on record.

7. Admittedly, the rider of the motorcycle died on account of the accident and the deceased person is not the owner of the vehicle, he is a borrower of the vehicle from the registered owner / third respondent. The claim petition has been filed by the claimants under Section 163-A of the Motor Vehicles Act, 1988 (in short 'MV Act'). It is to be pointed out that, the owner as well as the insurer of the offending vehicle have not been arrayed as a party in the claim petition and the claim has been made against the insurer of the motor cycle, which the deceased was riding. When a claim is made against the own insurer of the vehicle driven by the deceased, the accident having been committed by the deceased, the deceased becomes the Tort-feasor and as such for his neglect and default, no compensation can be claimed from the insurer.

8. The issue involved in this appeal is no longer *res integra* and the same has already been settled by this Court in the case of ***M/s.National Insurance Co.Ltd.,Puducherry V.Rani and Ors.*** in ***C.M.A.No.1848 of 2017 vide order dated 12.03.2020***. The relevant portion of the said judgment is extracted hereunder:

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.

14. Perusal of the judgment, it is crystal clear that the scope of Section 163-A of the Act cannot be expanded, so as to cover borrower of the vehicle, who stepped into the shoes of the registered owner and file claim petition under Section 163-A of the Act. In the event of entertaining such claim petition, undoubtedly, the other provisions namely, Section 147 and other related provisions would get defeated and the object sought to be reached through Special Provision under Section 163-A of the Act, would also be defeated. Thus the fact remains that in all such cases, where a vehicle was borrowed from the registered owner by any person and such vehicle met with an accident and the rider of the vehicle sustained injury or it resulted in death, then no claim petition is entertained under Section 163- A of the Act and even in cases of claim of Personal Accident Policy (not a statutory coverage in terms of Section 147 of the Act), then also the mandatory conditions under the Personal Accident Policy are to be established by the claimant. This being the principles to be followed, this Court is of the considered opinion that in the present case, the claim petition is unsustainable and not *entertainable and liable to be rejected.*

9. In view of the above fact, the above decision is squarely applicable to the case on the hand. Accordingly, the judgment and decree dated 17.07.2019 on the file of Motor Accident Claims Tribunal (Additional District Court (FTC), Kanchipuram) in M.C.O.P.No.476 of 2016 is set aside and consequently, the appeal stands allowed. The amount deposited by the appellant / Insurance Company, if any, in the credit of M.C.O.P.No.476 of 2016 on the file of Motor Accident Claims Tribunal (Additional District Court (FTC), Kanchipuram) is permitted to be withdrawn by the appellant / Insurance Company, by filing an appropriate application. No costs. Consequently, connected miscellaneous petition is closed.

15.11.2024

Index : Yes / No
Speaking order / Non-speaking order
Netrual Citation Case : Yes / No
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M.DHANDAPANI, J.

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To

1. Motor Accidents Claims Tribunal, (In the Court of Additional District Judge), at Kanchipuram.

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

C.M.A.No.996 of 2020

15.11.2024