IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 21.12.2023

Pronounced on : 07.06.2024

CORAM : JUSTICE N.SESHASAYEE

C.M.A.No.427 of 2022

1.Vasantha
2.Indhu
3.Minor Lokeswar
Rep. by his next friend, guardian
Mother Indhu. ... Appellant / Claimants

Vs

1.Venkatachalam

2.The Oriental Insurance Company Ltd.,
Divya Towers I Floor,
15-1, Fort Main Road
Salem. ... Respondents / Respondents

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, praying to set aside the judgment dated 06.01.2022 made in MCOP.No.290 of 2018 on the file of the Motor Accident Claims Tribunal / Subordinate Court, Omalur by allowing this appeal.

For Appellant : Mr.N.Manoharan

For Respondents : Ms.Srividhya for R2
R1 - Served [No appearance]

JUDGMENT

The claimants are the appellants herein. It was an unfortunate fatal accident that took place on 03.10.2017 at around 7.30 p.m., when the deceased was riding his motorcylce from Veesarediyur to Chinnatirupathi, he was forced to negotiate a dog that jumped on the line of the motion of the motorcycle suddenly. The motorcycle belonged to the first respondent (who chose to remain exparte before the Tribunal), and the victim was his employee who used the vehicle at that relevant time for his employer's purposes.

2. Seeking compensation, the dependants of the victim moved the MACT with MCOP.No.290 of 2018 under Section 163-A of the Motor Vehicles Act, 1988. The Tribunal dismissed the claim essentially on the ground that since the victim himself was the tortfeasor, his dependants cannot maintain a claim for compensation. Aggrieved by the same, the dependants are

before the Court.

3.1 The learned counsel for the appellants submitted the following :

(a) The Tribunal was wrong in branding the victim as a tortfeasor. The manner of accident indicates that it is an inevitable accident and therefore, no negligence can be attributed to him;

(b) Before the Tribunal, the insurance company took up a plea *inter alia* that it is not liable, because there is no insurance cover.

3.2 Developing his arguments, the learned counsel submitted that the insurance company had produced Ext.R1, insurance policy. This policy is not a Act Policy, but is titled as 'two-wheeler package policy'. Section II thereof (page 2 &3 of the policy) deals with 'liability to third parties'. Clause 3 (in Section II) provides that the insurance company "will indemnify any driver who is driving the vehicle on the insured's order or with insured's permission provided that such driver shall as though he/she was the insured observe fulfil and be subject to the terms, exceptions and conditions of this policy in so far as they apply." Inasmuch as the insurance company by contract has included the user of the vehicle with the permission of its owner within the net of third party, necessarily the victim of the accident involved in this case should be treated as a third party.

3.3 Summing up his arguments, the learned counsel submitted that the nature of the accident being an inevitable accident and had occasioned not due to the negligence of the victim, and since he being a third party by virtue of the aforesaid terms of the insurance policy, the claimants are entitled to compensation under Sec.163-A of the Act.

4. Placing reliance on the dictum in ***Ramkhiladi and another Vs United India Insurance Company and another*** [(2020) 2 SCC 550], where the Hon'ble Supreme Court has held that he who wants to claim compensation under Sec.163-A of the M.V.Act, such person or their dependants must be a third party, and not the owner or the user of the vehicle, the learned counsel for the respondent argued that inasmuch as the victim of the accident is only a user of the motorcycle, he cannot be considered as a third party within the meaning of Sec.163A of the Act. Relying on the ratio in ***United India Insurance Company Limited Vs Sunil Kumar and another*** [(2019) 12 SCC 398], the learned counsel submitted that only when the claimants are either a third party or dependants of a third party within the meaning of

Sec.147 of the M.V.Act, a claim under Sec.163-A of the Act can be sustained and the insurer would be under an obligation to pay the compensation. So far as the present case is concerned, the victim was a rider of the motorcycle, and the nature of policy only covers P.A cover for the owner, and not for the borrower of the vehicle. Hence, the claimants would neither be entitled to invoke Sec.163-A nor would be entitled to any P.A cover.

5. In response, the counsel for the appellants submitted that Ext.P4 = Ext.R1 being a package policy or a comprehensive policy, and the victim as a rider of the motorcycle is insured, he becomes a third party for the purpose of claim. Placing reliance on ratio in ***Oriental Insurance Company Limited Vs Rajni Devi and Others*** [(2008) 5 SCC 736], the learned counsel submitted that while the claim under Sec.163-A can be maintained only by those third party victims who qualify as a third party under Sec.147, it does not cover cases where the contract of insurance have expanded its scope. In particular, he relied on Clause (ii) of Section II of the terms of Two Wheelers Package Policy.

6.1 The rival contentions are carefully weighed. In ***Ramkhiladi and another Vs. United India Insurance Company and another*** [(2020) 2 SCC 550], the Supreme Court has reiterated the earlier view in ***Ningamma and another Vs United India Insurance Company Limited*** [(2009) 13 SCC 710] to the effect that Sec.163-A of the M.V.Act can be invoked only by those who qualify as third parties under Sec.147. And that it will not include either the owner of the insured vehicle or any permissive user of the said vehicle. So far as the present case is concerned, inasmuch as the appellants/claimants admit that the victim of the accident was only a permissive user under the owner of the vehicle, surely they may not be able to maintain nor sustain their petition under Sec.163-A of the Act. This takes to the second leg. However, inasmuch as the liability of the insurance company is contractual, one need to investigate whether by contract the insurance company has expanded the definition of third party, so as to include either the owner of the vehicle, or his, or her permissive driver. This takes this Court to the relevant clause in the package policy (Ext.R1) and it reads as below :

> *"SECTION II : LIABILITY TO THIRD PARTIES :*
>
> *i. ....*
>
> *ii. death of or bodily injury to any person including*

occupants carried in the insured vehicle (provided such occupants are not carried for hire or reward) but expect so far as it is necessary to meet requirements of Motor Vehicles Act, the Company shall not be liable where such death or injury arises out of and in the course of the employment of such person by the insured. "

6.2 According to the counsel for the appellants, under this clause, the insurance company has undertaken to indemnify any driver who has driven the vehicle on the insured's order or with insured's permission, and accordingly the victim is entitled to be compensated.

7. This Court considers that the appellants/claimants appear to have entertained a great deal of misconception in relying on Clause (ii) of Section II of the terms of package policy which forms part of Ext.R1. The issue is whether the permissive driver or owner will be qualified to be termed as 'third party' for the purpose of Sec.163-A of M.V.Act, and this has been squarely answered by the authoritative pronouncements of Supreme Court in ***Ramkhiladi*** *and* ***Ningamma*** cases. And whether by contract, the insurance company had expanded its liability to include the permissive driver which the victim of the present accident is concerned, the relevant

clause makes it amply clear that this clause will apply subject to the limitations of indemnity granted by this section to the insured. Therefore, what has been granted to the insured, and what kind of premium has been paid, need to be ascertained, to which, one needs to look to the policy cover, which shows that the owner is entitled to P.A. cover for a maximum amount of Rs.1,00,000/-.

8. Now inasmuch as the victim of the accident is the permissive user under the insured, he being the latter's employee, he literally steps into the shoes of the insured. Therefore, he is no more entitled to claim in excess of Rs.1,00,000/-. Accordingly, this Court partially allows the appeal and holds that the appellants herein are entitled to a sum of Rs.1,00,000/- as compensation, and hold that the respondents are jointly and severally liable to pay the same with interest at 7.5% per annum from the date of the petition till the date of payment of compensation. No costs.

07.06.2024

Index : Yes / No
Internet : Yes / No
Speaking order / Non-speaking order
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N.SESHASAYEE.J.,

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Pre-delivery Judgment in
C.M.A.No.427 of 2022

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