IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.04.2024

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Civil Miscellaneous Appeal No.2221 of 2022
and
C.M.P.No.17182 of 2022

ICICI Lombard General Insurance Co., Ltd
United Arcade III Floor, Annamalai Nagar
Karur Bye Pass Road, Thillai Nagar
Trichirapalli 620 018. ... Appellant

Vs.

1.Sulotchana
2.Rajeswari
3.Venkatesan ... Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 15.10.2019 made in M.C.O.P.No.431 of 2016 on the file of Motor Accident Claims Tribunal, (Principal District Judge, Mahila Court) at Perambalur.

For Appellant : Ms.R.Sreevidhya
For Respondents : Mr.S.P.Yuvaraj - for R1 & R2
R3 - No appearance

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J U D G M E N T

The insurance company has preferred this appeal challenging the award passed by the Motor Accident Claims Tribunal (Principal District Judge, Mahila Court) at Perambalur in M.C.O.P.No.431 of 2016, dated 15.10.2019.

2. The claimants are the wife and daughter of the deceased. The deceased was riding a two wheeler along with his wife, who was the pillion rider on 29.06.2015. He had borrowed the two wheeler from the first respondent and the first respondent had insured the vehicle with the second respondent. At about 11.30 a.m., when the two wheeler was moving near Anna Valaivu Bus Stop at Thanjavur-Trichy Main Road, a dog suddenly crossed the road and as a result the deceased applied sudden break and lost control and the vehicle dashed on a stone lying in the road and the deceased along with the pillion rider were thrown out of the vehicle. The deceased sustained head injuries and was admitted in the Government Hospital. After nearly four days, the deceased succumbed to the injuries on 02.07.2015. An FIR came to be registered in Crime No.198 of 2015. It is under these circumstances the wife and daughter filed the claim petition seeking for compensation.

3. The Tribunal, on considering the facts and circumstances of the case and on appreciation of oral and documentary evidence, came to a conclusion the deceased has driven the two wheeler in a rash and negligent manner and was the tort feasor. Having rendered such a finding, the Tribunal concluded that the vehicle belonging to the first respondent is involved in the accident and therefore, the second respondent is liable to pay the compensation to the dependants. Even though the claim petition was filed under Section 163A of the Motor Vehicles Act, the Tribunal came to a conclusion that the aspect of

negligence is irrelevant and that the dependants / legal heirs of the tort feasor will be entitled to be compensated. Accordingly, the Tribunal fixed a total compensation of a sum of Rs.3,07,600/- to be paid along with an interest at the rate of 7.5% per annum.

4. Aggrieved by the award passed by the Tribunal, the insurance company have filed the present appeal before this Court.

5. Heard Ms.R.Sreevidhya, learned counsel for appellant insurance company and Mr.S.P.Yuvaraj, learned counsel for the respondents 1 and 2.

6. This Court carefully considered the submissions made on either side and the materials available on record.

7. This Court also carefully went through the award passed by the Tribunal.

8. In the instant case, the Tribunal has reached a categorical conclusion that the deceased is the tort feasor. That apart, the deceased had also borrowed the vehicle belonging to the first respondent. Having rendered such a finding, the Tribunal went on in granting compensation under Section 163A of the Motor Vehicles Act.

9. The issue involved is covered by the judgment of the Apex Court in **Ramkhiladi and Others Vs The United India Insurance Company and Others** reported in **2020 (1) CTC 443**. This judgment was followed by this Court in **National Insurance Company Limited, Puducherry vs. Rani and 5 others** reported in **2020 (2) CTC 703** and the relevant portions are extracted hereunder:

> *9. The Tribunal, thereafter also opined that the deceased was earning a sum of Rs.10,000/- per month, but however restricted the income at Rs.40,000/- per annum and deducted one half for personal expenses and finally, fixed the annual income at Rs.20,000/- and granted compensation by applying multiplier at '16'. The Tribunal also granted compensation towards funeral expenses and also compensation towards loss of love and affection.*
> *The Tribunal granted a total compensation of Rs.4,00,000/-.*
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> *10. Questioning both liability and also the very jurisdiction of the Tribunal to determine compensation, the present appeal has been filed.*
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> *11. Heard Mr.K.Vinod, learned counsel appearing for the appellant/Insurance Company and Mr.K.Varadha Kamaraj, learned counsel appearing for the respondents/claimants.*
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> *12. It is the contention of Mr.K.Vinod, learned counsel for the appellant/Insurance Company that the facts of the case pointed out that the deceased had borrowed the vehicle of his father/first respondent and had met with an accident while applying sudden brake to avoid hitting a cow, had fallen down and owing to such accident, had suffered grievous injuries leading to his death.*

13. These facts are not disputed. But the crucial aspect as per the narration of those facts is that the deceased Venkatesan had borrowed the vehicle of his father. It is therefore contended by Mr.K.Vinod, learned counsel that due to such act of borrowal of the vehicle, Venkatesan should be deemed to have stepped into the shoes of the owner of the vehicle and there being no other vehicle involved in the accident, he cannot therefore claim compensation for his own rashness or his own negligent driving.

14. It is claimed that the provision under Section 163 A of the said Act would also not be attracted if the annual income of the claimant or the deceased was more than Rs.40,000/- and therefore, it is urged that the order of the Tribunal should be re-visited by this Court and interfered with and set aside."

10. The scope of Section 163A cannot be expanded so as to cover the borrower of the vehicle who has stepped into the shoes of the original owner. Where the vehicle is borrowed from the original owner by any person and such vehicle meets with an accident resulting in the rider of the vehicle sustaining injury or resulting in his death, no claim petition can be entertained under Section 163A of the Act. It is not in dispute in this case that the registered owner of the vehicle was the first respondent and the deceased was the borrower of the vehicle. That apart, the deceased was also found to be the tort feasor. Therefore, there is no question of mulcting the liability on the insurance company.

11. In the light of the above discussion, the award dated 15.10.2019 made in M.C.O.P.No.431 of 2016 on the file of Motor Accident Claims Tribunal, (Principal District Judge, Mahila Court) at Perambalur is set aside and the appeal stands allowed. If any amount has been deposited by the appellant, the same shall be permitted to be withdrawn with applicable rate of interest.

In the result, the Civil Miscellaneous Appeal is partly allowed. No costs. Consequently, connected miscellaneous petition is closed.

15.04.2024

Speaking Judgment/Non-speaking Judgment
Index :Yes/No
Neutral citation: Yes/No
KST

To

The Motor Accident Claims Tribunal,
(Principal District Judge, Mahila Court)
Perambalur.

N.ANAND VENKATESH, J.

KST

C.M.A.No.2221 of 2022

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