IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.11.2024

CORAM :

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

C.M.A.No.1505 of 2020
and CMP.No.11147 of 2020

The Manager,
Oriental Insurance Company Ltd.,
Motor Third Party Claim Office,
Oriental House, II Floor,
No.216, Prakasam Salai, Broadway,
Chennai-2. ...Appellant

Vs.

1. A.Anbarasi
W/o. Late C.Arumugam

2. Minor A.Thamizh
S/o.Late C.Arumugam

3. Minor A.Dilli Ganesh,
S/o.Late C.Arumugam
(minor respondents are rep. By the
first appellant)

4. C.Muniyammal

5. Minor A.Prahish
S/o.Late C.Arumugam
5th respondent impleaded as per order dated
09.11.2017 in IA.No.1749 of 2017 and the petition
amended as per order in IA. No.2081/17 on 21.12.2017

6. E.Harikrishnan ...Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree made in M.C.O.P.No.956 of 2015 dated 15.03.2019 on the file of the Motor Accidents Claims Tribunal, Kanchipuram Additional District Court, FTC, Kanchipuram.

For Appellant : Mr.R.Sivakumar

For Respondent : Mr.M.Sivakumar RR1 to 5

JUDGEMENT

Aggrieved by the award passed in M.C.O.P.No.956 of 2015 dated 15.03.2019 on the file of the Motor Accidents Claims Tribunal, Kanchipuram Additional District Court, FTC, Kanchipuram, the insurer has come up with this Appeal.

2. The case of the appellant is that on 17.09.2015 at about 4.30 p.m. the deceased Arumugam was riding a two wheeler bearing Reg. No.TN 21 AM 9570 owned by the 6th respondent and insured with the appellant insurance company, proceeding from Sevilimedu village towards Indira Petrol Bunk. At that time, one dog was crossed the road.

On seeing this, the deceased tried to avoid the hit against the dog but he failed and hit agianst the dog and fell down near the pit along with his motor cycle. Due to the said accident, he had sustained injuries and taken to the hospital. During course of medical treatment, he died on 20.09.2015. Thereby, the claimants, being the dependants of the deceased Arumugam, filed a claim petition claiming a compensation for the death of the deceased. After contest, the tribunal, vide impugned judgment awarded a compensation of Rs.4,84,700/- and fastened the entire liability as against the appellant/ insurance company. Aggrieved by the said order, the appellant had come up with this appeal questioning the liability of the insurer.

3. Learned counsel for the appellant submitted 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. It is the

further submission of the learned counsel that, in the absence of impleading the owner and insurer of the two wheeler, the claim petition filed by the dependants of the deceased is not maintainable. While so, without appreciating the same, the tribunal, vide impugned judgment awarded a compensation of Rs.4,84,700/- 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."

4. The learned counsel appearing for the respondents did not dispute the submission made by the learned counsel for the appellant. As

per the insurance policy, the owner and driver are entitled to get one lakh rupees for personal accident coverage. Therefore, this Court may direct the appellant to pay a sum of Rs.1,00,000/- towards personal accident coverage along with 7.5% interest from the date of petition till realization.

5. Heard the learned counsel for the appellant as well as the learned counsel for the respondents and perused the materials available on record.

6. A perusal of the materials available on record reveals that, the deceased while trying to avoid hitting the dog, lost his control and fell down in a pit along with motor cycle and sustained fatal injuries. The Ex.R1, FIR registered by the Law enforcing agency clearly reveals that the accident had occured due to the rash and negligent driving of the deeased. 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 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.

7. In the case on hand, the accident having been committed due to the rash and negligent driving by the deceased, the claimants cannot maintain a claim petition against the insurer of the motorcycle driven by the deceased.

8. The aforesaid view of this Court finds favour in the decision of the Apex Court in the case of ***Ramkhiladi and Ors Vs. The United India Insurance Company and Ors.*** relied upon by the learned counsel for the appellant and the tribunal without adverting to the legal issue coupled with the documentary evidences has erroneously awarded the compensation, which requires interference.

9. The learned counsel for the respondents/claimant have also

accepted the entire fact and requested this Court to fix the personal accident coverage.

10. Accordingly, the appeal is allowed in the aforesaid terms and the impugned award passed by the tribunal in M.C.O.P.No.956 of 2015 dated 15.03.2019 is set aside. The appellant-insurance company is directed to deposit a sum of Rs.1,00,000/- towards personal accident coverage in credit of MCOP. No.956/2015 before the Tribunal and permitted to withdraw of the remaining award amount, if any deposited by them by filing necessary application before the Tribunal. Upon receipt of such deposit being made, the Tribunal is directed to deposit the entire award amount of Rs.1,00,000/- along with interest into the bank account of the first respondent/wife of the deceased from the date of claim petition till realization within a period of two weeks thereafter. There shall be no order as to costs in the present appeal. Consequently, connected miscellaneous petition is closed.

15.11.2024

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Index : Yes / No
Speaking order : Yes / No
NCC : Yes / No

To

1.The Motor Accidents Claims Tribunal, Kanchipuram Additional District Court, FTC, Kanchipuram.

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

M.DHANDAPANI, J.

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C.M.A.No.1505 of 2020

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