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Civil Miscellaneous Appeal No.1002 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.04.2024

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THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Civil Miscellaneous Appeal No.1002 of 2022

and

C.M.P.No.7427 of 2022

The Branch Manager,
M/s.New India Assurance Company Limited,
S.S.Pillar Complex, 1st Floor,
Thattam Keela Veethi,
Porayar Post, Tharangambadi Tk.

... Appellant

Vs.

1.Revathi
W/o.Shankar

2.Minor Santhosh
S/o.Shankar

3.Minor Nilesh
S/o.Shankar

4.Vasanth
W/o.Agoram

5.Kalidoss. G
S/o.Govindaraj

... Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 20.10.2021 made in M.C.O.P.No.17 of 2018 on the file of Principal Subordinate



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Court, Motor Accident Claims Tribunal, Mayiladuthurai.

For Appellant : Ms.Pavithra Sundararajan
for Mr.S.R.Sundar

For Respondents : Mr.D.Kumaralingam [R1 to R3]

JUDGMENT

The appellant insurance company, aggrieved by the award passed by the Principal Subordinate Court, Motor Accident Claims Tribunal, Mayiladuthurai, in M.C.O.P.No.17 of 2018, dated 20.10.2021, has filed the present appeal questioning the liability that has been fastened against the insurance company by the Tribunal.

2. The claimants are wife, children and mother of the deceased Shankar. They filed the claim petition on the ground that the deceased Shankar had borrowed the vehicle belonging to the first respondent and was riding the same on 31.08.2017 from Poonthazhai to Sirkazhi in the highways and when the vehicle was approaching a curve, it skidded and as a result, the deceased lost control and fell down from the vehicle and he sustained grievous injuries. Unfortunately, he succumbed to the injuries. It is under these circumstances, the claimants filed the claim



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petition seeking for payment of compensation.

3. The Tribunal, on considering the facts and circumstances of the case and on appreciation of evidence, came to a conclusion that the claim petition was filed under Section 163-A of the Motor Vehicles Act and therefore, it is not necessary to go into the question of negligence. Having rendered such a finding, the Tribunal proceeded further to fix the total compensation at Rs.4,09,500/- payable by the insurance company with interest at 7.5% p.a. Aggrieved by the same, the present appeal has been filed before this Court by the insurance company.

4. Heard Ms.Pavithra Sundararajan, learned counsel for appellant insurance company and Mr.D.Kumaralingam, learned counsel for respondents 1 to 3.

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

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



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7. The main ground that was urged by learned counsel for appellant insurance company is that the deceased was admittedly a borrower of the two-wheeler from the first respondent and he had stepped into the shoes of the owner of the vehicle and therefore, he cannot be treated as a third party and the claim petition filed under Section 163-A of the Motor Vehicles Act by the legal heirs of the deceased is not maintainable. To substantiate this submission, learned counsel relied upon the judgment of the Apex Court in ***Ramkhiladi and another v. United India Insurance Company and another [(2020) 2 SCC 550]***.

8. *Per contra*, learned counsel for respondents 1 to 3 submitted that the accident had taken place since the two-wheeler skidded in a curve which was an oily surface and therefore, the responsibility must be taken by some body to compensate the legal heirs of the deceased Shankar. Learned counsel, therefore, submitted that the insurance company can be made liable to pay compensation and to recover the same from the first respondent.

9. In the considered view of this Court, when there is no dispute



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with regard to the fact that the vehicle was borrowed by the deceased from the first respondent, the deceased automatically gets into the shoes of the owner of the vehicle and he cannot be treated as a third party. At this juncture, it will be relevant to take note of the judgment of the Apex Court in ***Ramkhiladi's*** case, referred supra. In this judgment, it has been categorically held that no claim petition can be maintained by the borrower of the vehicle or his legal representatives and they cannot be treated as a third party against the owner of the vehicle or the insurer of the vehicle. This is in view of the fact that the borrower of the vehicle will get into the shoes of the owner of the vehicle and therefore, he cannot maintain the petition under Section 163-A of the Motor Vehicles Act. This judgment has been consistently followed by this Court and such petitions are held to be not maintainable.

10. In the instant case, unfortunately the claimants have lost their breadwinner in a freak accident that had taken place. The liability cannot be fastened on the basis of sympathy and there must be some legal basis to fasten the liability on the insurance company. Once it is held that the claim petition itself cannot be maintained under Section 163-A of the



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Motor Vehicles Act, there is no question of fastening the liability on the insurance company.

11. It is also not possible to fasten the liability on the owner of the vehicle since the vehicle was borrowed from the owner of the vehicle by the deceased and for the accident and the consequent demise, the owner cannot be made responsible.

12. In the light of the above discussion, the award passed by the Principal Subordinate Court, Motor Accident Claims Tribunal, Mayiladuthurai, in M.C.O.P.No.17 of 2018, dated 20.10.2021, is hereby set aside. If any amount has been deposited by the appellant insurance company, the same shall be permitted to be withdrawn by the appellant insurance company with accrued interest, if any.

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

26.04.2024

Speaking Judgment/Non-speaking Judgment

Index : Yes/No

Neutral citation: Yes/No

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The Principal Subordinate Court,
Motor Accident Claims Tribunal,
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N.ANAND VENKATESH, J.

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