IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 09.12.2024

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.No.1997 of 2018
and C.M.P.No.15512 of 2018

M/s.Oriental Insurance Company Limited,
D5, Shan Complex,
6/990-B, Bazar Road,
Mattanseri, Cochin,
Kerala – 682 002. ...Appellant

Vs.

1.Nirmala
2.Minor Arunkumar
3.Minor Tamizharasan
4.Nallammal
5.Pachamuthu
(Minors 2 & 3 represented by their natural guardian and next friend 1st respondent herein) ...Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree made in M.C.O.P.No.82 of 2015, dated 07.11.2016 on the file of the Motor

Accidents Claims Tribunal, Additional District and Separate Court, Essential Commodities Act, Salem.

For Appellant : Mr.S.Senthil Kumar

For Respondents : R1 to R5 – No appearance

JUDGMENT

This appeal is filed by the appellant challenging the judgment and decree passed by the Motor Accidents Claims Tribunal, Additional District and Separate Court, Essential Commodities Act, Salem in M.C.O.P.No.82 of 2015, dated 07.11.2016.

2.For the sake of convenience, the parties are referred to as per their ranking before the Tribunal.

3.The petitioners are the claimants, the first respondent is the owner of the vehicle and the second respondent is the Insurance Company before the Tribunal.

4.The brief facts of the case are as follows:

According to the claimants, on 08.01.2007, Venkatachalam, Srinivasan, 2nd driver and cleaner by name Thailappan all were carrying cotton loads from Aurangabad, Maharashtra and started their journey to Hindupur, Andhra Pradesh. While on the way, on 10.01.2007 about 10.30. a.m., while the said Venkatachalam, was driving the lorry near Jayamangala river, suddenly, a cow crossed the road. In order to avoid an accident, the deceased sweaned the lorry on the left side of the road and dashed against the roadside tree. As a result, the deceased sustained severe head injuries and died on the spot. The other driver Srinivasan and cleaner Thailappan sustained simple injuries. A case was registered in Crime No.5/2007 under Sections 337, 304-A of IPC by Paragi Police. The claimants filed a claim petition before the Tribunal in M.C.O.P.No.82 of 2015 and the Tribunal awarded a sum of Rs.8,75,000/- as compensation. Aggrieved by the same, the present appeal has been filed.

5.Learned counsel appearing for the appellant Insurance Company submitted that the deceased was driving the vehicle in a rash and negligent manner and dashed against the roadside tree and as per the policy, the deceased is not a third party, but merely steps into the shoes of the owner for claiming compensation. Hence, the claim petition filed under Section 166 of the Motor Vehicles Act, is not maintainable and the similar issue was dealt by this Court, wherein this Court held that the tortfeasor is not entitled to claim third party compensation either under Section 166 of the Motor Vehicles Act. However, the policy provides for personal accident coverage to owner/driver to an extent of Rs.2,00,000/- as per the policy. Hence, he prayed for appropriate orders.

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

7.Though notice has been served and the names of the respondents are printed in the cause list, there is no representation either in person or through counsel. Considering the pendency of the appeal, this Court is inclined to dispose of the Appeal based on the materials available on record.

8.The accident and the manner in which the accident occurred are not disputed. This appeal has been filed questioning the liability as well as negligence.

9.Before the Tribunal, the first petitioner was examined as PW1, Mr.Thailappan was examined as PW2 and on the side of the petitioners, 9 documents were marked as Exs.P1 to P9. On the side of the respondents, Mr.Balasubramaniam was examined as RW1 and no documents were marked.

10.Admittedly, the deceased is the driver of the vehicle, who drove the vehicle in a rash and negligent manner and dashed against the roadside tree in which, he lost his life. The issue that arises in this appeal is no longer *res integra* and the same was decided by this Court in C.M.A.No.1251 of 2019 dated 21.08.2020, wherein this Court held as under:-

> *"13. 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.

14.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.

15.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."*

11.The above decision makes it clear that the deceased being the dirver of the vehicle, the legal heirs of the deceased could at best claim the personal accident coverage under Section 163A and are not entitled for compensation under Section 166 of the Motor Vehicles Act as the policy is not a comprehensive policy and additional premium was paid for Personal Accident coverage for owner cum driver to an extent of Rs.2,00,000/-. Therefore, this Court is inclined to award compensation in a sum of Rs.2,00,000/- to the claimants together with interest at 7.5% p.a.

from the date of claim petition till the date of deposit within six weeks from the date of receipt of a copy of this judgment. The 1st respondent/claimant was aged 15 years during the year 2021 and by now the 1st respondent would have attained majority. Therefore, on the deposit of the compensation being made by the insurance company and the appellant herein of their respective shares within the time stipulated above, the Tribunal shall transfer the amount directly to the Bank account of the 1st respondent/claimant within a period of two weeks thereafter upon satisfying itself with regard to the 1st respondent/claimant having attained majority. There shall be no order as to costs in this appeal.

12.The Civil Miscellaneous Appeal is partly allowed with the above terms. No costs. Consequently, connected miscellaneous petition is closed.

09.12.2024

Index: Yes/No
Speaking order: Yes/No
Neutral Citation: Yes/No
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M.DHANDAPANI, J.

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To

1.The Motor Accidents Claims Tribunal,
Additional District and Separate Court,
Essential Commodities Act, Salem.

2.The Section Officer,
VR Section,
High Court of Madras, Chennai – 600 104.

C.M.A.No.1997 of 2018

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