IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.11.2024

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.No.769 of 2020
And
C.M.P.No.4750 of 2020

United India Insurance Company Limited
Represented by its Branch Manager
No.50, Jeevanandam Street,
Karaikal. ... Appellant

Vs.

1.Rajesh
2.Sivakumar ... Respondents

Prayer:

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award and decree dated 20.04.2018 made in M.C.O.P.No.102 of 2017, on the file of the Motor Accidents Claims Tribunal (Sub Court), Karaikal.

For Appellant : Mr.D.Bhaskaran
For Respondents : Mr.K.Varadhakamaraj

J U D G M E N T

The second respondent before the Motor Accidents Claims

Tribunal is the appellant herein. This appeal has been filed against the judgment and decree dated 20.04.2018 passed by the Motor Accidents Claims Tribunal (Sub Court), Karaikal, in M.C.O.P.No.102 of 2017.

2.The learned counsel appearing for the appellant submitted that the first respondent claimant filed claim petition before the Motor Accidents Claims Tribunal, claiming compensation of Rs.1 Lakh alleging that on 28.08.2016 at about 12.15 p.m., when the first respondent was riding the motorcycle, bearing Registration No.PY-02/M-1868 with one Mohanraman as pillion rider at Bharathiar Main Road, Keezhakasakudy Village near Chennai Restaurant from South to North direction, the rider of the motorcycle bearing Registration No.PY-02 H 5119, which came in the same direction drove the vehicle in a rash and negligent manner and hit the motorcycle driven by the first respondent, due to which, the first respondent sustained injuries. After adjudication, the Tribunal awarded a sum of Rs.30,000/- as compensation to the claimant along with interest at 7.5% p.a. from the date of petition (12.06.2017) till the date of deposit with costs and directed the appellant to deposit the amount.

3.The learned counsel appearing for the appellant further submitted that in the claim petition, the first respondent claim that the rider of the motorcycle bearing Registration No.PY-02 H 5119 hit the motorcycle driven by the claimant, however, the owner of the said vehicle and its insurer was not arrayed as party in the claim petition. The learned counsel further submitted that the first respondent is the borrower of the motorcycle and not a third party and the claim made by the borrower of the vehicle is impermissible.

4.The learned counsel appearing for the appellant further submitted that the issued involved in the present case is covered by the decision of the Hon'ble Apex Court reported in ***(2020) 2 SCC 550 [Ramkhiladi & Anr. Vs. The United India Insurance Company & Anr.]***, wherein the Hon'ble Apex Court has categorically held that the insurance company shall be liable to pay the compensation to a third party and in the present case, the first respondent is not a third party.

5.The learned counsel appearing for the first respondent/ claimant submitted that the Tribunal after considering all the factual aspects, awarded compensation which is just and reasonable and the same warrants no interference.

6.Heard the arguments advanced on either side and perused the materials available on record.

7.Admittedly, on 28.08.2016 at about 12.15 p.m., when the first respondent was riding the motorcycle, bearing Registration No.PY-02/M-1868 with one Mohanraman as pillion rider at Bharathiar Main Road, Keezhakasakudy Village near Chennai Restaurant from South to North direction, the rider of the motorcycle bearing Registration No.PY-02 H 5119, which came in the same direction, drove the vehicle in a rash and negligent manner and hit the motorcycle driven by the first respondent, due to which, the first respondent sustained injuries. However, the first respondent has not taken any steps to implead the owner of the motorcycle bearing Registration No.PY-02 H 5119 and its insurer, instead filed claim petition as against the owner of the motorcycle driven by him and its insurer.

8.The very same issue was considered by the Hon'ble Apex Court in the decision reported in ***(2020) 2 SCC 550 [Ramkhiladi & Anr. Vs. The United India Insurance Company & Anr.]***, the relevant portion of which, is extracted hereunder:

> *"9.5 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.

9.6 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."*

9.The decision cited supra makes it clear that the liability of the insurance company would be for third party only. In the present case, the first respondent borrowed the vehicle from the second respondent and hence, he is not a third party and hence, he cannot file claim petition as against the owner of the vehicle driven by him and its insurer.

10.The civil miscellaneous appeal is allowed. The judgment and decree dated 20.04.2018 passed by the Motor Accidents Claims Tribunal (Sub Court), Karaikal, in M.C.O.P.No.102 of 2017, is set aside. The appellant Insurance Company is permitted to withdraw the entire amount already deposited by them, if any. No costs. Consequently, the connected miscellaneous petition is closed.

21.11.2024

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Index: Yes/ No
Speaking Order: Yes/ No
NCC: Yes/ No

To
1.The Motor Accidents Claims Tribunal,
(Sub Court), Karaikal.

M.DHANDAPANI,J.
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