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IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 01 / 08 / 2024

JUDGMENT PRONOUNCED ON : 29 / 08 / 2024

CORAM:

THE HON'BLE MR.JUSTICE R.SAKTHIVEL

CMA NO.1250 OF 2022
AND CMP NO.9209 OF 2022

The Manager
 Shriram General Insurance Co. Ltd.,
 2nd Floor, Nagappa Complex,
 North Mettupalayam Road,
 Coimbatore District.

... Appellant /
 2nd Respondent

Versus

1.Kalaiarasan

... 1st Respondent /
 Petitioner

2.Raghu

... 2nd Respondent /
 1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, praying to set aside the award dated 26.11.2021 made in M.C.O.P.No.188 of 2014 on the file of Motor Accidents Claims Tribunal (Additional Sub Court) Mayiladuthurai.

For Appellant : Mr.S.Dhakshnamoorthy



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For Respondent-1 : Mr.T.Gobinath

For Respondent-2 : Given up

J U D G M E N T

Dissatisfied with the Award dated November 26, 2021, made in M.C.O.P.No.188 of 2014 on the file of 'Motor Accident Claims Tribunal (Additional Sub Court), Mayiladuthurai' [henceforth 'Tribunal'], the appellant/second respondent has filed this Civil Miscellaneous Appeal.

2.For the sake of convenience, the parties will henceforth be referred to as per their array before the Tribunal.

Petitioner's case

3.The case of the petitioner is that on October 15, 2013, at about 08.30 p.m., the petitioner was travelling on a Motorcycle bearing Registration No.TN-51-L-6890 belonging to the first respondent, in Malliyakollai Main Road in south to north direction. At that time, a Motorcycle coming from opposite direction collided with the petitioner's Motorcycle causing an accident, and fled the scene of occurrence. In the accident, the petitioner sustained severe injuries as he was knocked off the bike. Immediately, the



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petitioner was rushed to Government Hospital, Mayiladuthurai and thereafter, he was admitted as an in-patient in Tiruvarur Government Medical College Hospital where he took treatment for ten days. Thereafter, the petitioner was referred to Thanjavur Medical College Hospital where he took treatment for another ten days. Due to the accident, the petitioner suffered fracture in his right leg toe, fracture in right hand fingers and multiple other injuries. Plastic surgery has also been performed on the petitioner. The petitioner incurred more than a sum of Rs.1,00,000/- as medical expenses. At the time of accident, the petitioner had completed B.E. Civil Engineering and was working as a Supervisor in a private construction company, thereby earning a sum of Rs.15,000/- per month. A case in Crime No.504/2013 on the file of Manalmedu Police Station was registered under Sections 279 and 337 of Indian Penal Code, 1860 against an 'unidentified vehicle'. Accordingly, the petitioner filed a claim petition under Section 163-A of the Motor Vehicles Act, 1988 before the Tribunal seeking a sum of Rs.10,00,000/- as compensation.

1st Respondent's case



4.The first respondent who is the owner of the Motorcycle bearing Registration No.TN-51-L-6890 did not contest the petition. He was called absent and set *ex-parte* before the Tribunal.

2nd Respondent's case

5.The second respondent – Insurance Company filed a counter stating that the accident was not due to the negligence of the driver of the first respondent's vehicle. Instead, it was caused by the negligence, rashness and over speeding of the driver of an unknown two-wheeler. The petitioner possessed a valid driving license to drive the first respondent vehicle at the time of accident. When no negligence can be attributed to the driver of the first respondent's vehicle, no compensation can be sought against the second respondent. Since the FIR was filed against the unknown vehicle, this respondent, who is the insurer of the petitioner travelled vehicle, is not liable to pay any compensation. Further, the petition is bad for non-joinder of necessary parties, namely the owner and insurer of the unknown vehicle. Accordingly, the second respondent – Insurance Company sought to dismiss the claim petition.

6.At trial, on the side of the petitioner, the petitioner himself was



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examined as P.W.1 and Ex-P.1 to Ex-P.9 were marked. On the side of the second respondent, one Mr.Stephen James Michael, Legal Officer attached to the second respondent – Insurance Company was examined as R.W.1 and the insurance policy was marked as Ex-R.1.

7.The Tribunal found that the claim petition under Section 163-A of the Motor Vehicle Act, 1988, is not maintainable as the petitioner is a borrower of the vehicle of the 1st respondent. Further found that the accident occurred due to the rash and negligent riding of the rider of the unidentified motorcycle, and not by any negligence on the part of the petitioner. The first respondent had a personal accident coverage policy. At the time of accident, the petitioner had a valid driving license. Accordingly, the Tribunal held the second respondent – Insurance Company is liable to pay a sum of Rs.1,00,000/- to the petitioner as Personal Accident Cover.

8.Feeing aggrieved with the Award, the Insurance Company has preferred this Civil Miscellaneous Appeal.

9.The learned counsel appearing for the appellant – Insurance



Company submitted that the petitioner being a borrower of the insured vehicle is neither a third party nor is he contractually covered under the policy. Thus, the claim petition under Section 163-A of the Motor Vehicles Act, 1988 is not maintainable. It was further argued that the Tribunal failed to consider the terms and conditions of Ex-R.1 – Insurance Policy. As per the Insurance Policy, the Insurance Company is liable to compensate only the owner-driver of the vehicle with the sum insured of Rs.1,00,000/- as personal accident cover, that too only when the accident results in death, or loss of two limbs, or loss of sight in both eyes or results in permanent total disablement to the owner of the vehicle. In short, learned counsel appearing for the appellant submitted that the appellant is neither a third party nor owner of the vehicle and hence, the appellant – Insurance Company is not liable to pay any compensation to the petitioner. Accordingly, he prayed to allow the Civil Miscellaneous Appeal and set aside the Award passed by the Tribunal against the Insurance Company.

9.1. In support of his submission, learned Counsel for the appellant relied on the following judgments:

(i) Judgment of the Hon'ble Supreme Court in
Ramkhiladi and Others Vs. The United India Insurance



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Company and Others [2020 (2) SCC 550];

(ii) Judgment of this Court in *M/s.National Insurance Co. Ltd., Vs. Rani and Others [CMA No.1848 of 2017 decided on 12.03.2020];*

(iii) Judgment of this Court in *The Cholamandalam MS General Insurance Company limited Vs. Ramesh Babu [MANU/TN/4713/2020];*

10.Per contra, learned Counsel appearing for the first respondent/petitioner submitted that the Insurance Policy – Ex-R.1 is a package policy (comprehensive). Since the petitioner being a borrower of the vehicle steps into the shoes of the first respondent owner, he is entitled to claim compensation under the personal accident cover as per the terms of Ex-R.1. There is no reason to interfere with the Award of the Tribunal. Accordingly, he prayed to dismiss the Civil Miscellaneous Appeal.

11.This Court has considered the submissions made on either side and perused the materials available on record.

12.Admittedly, the petitioner borrowed the vehicle from the first respondent and while riding the first respondent's motorcycle, he met with an



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accident. FIR – Ex-P.1 and the evidence of P.W.1 would show that an unidentified vehicle hit the petitioner's motorcycle and fled the scene. The Tribunal found that there was no negligence on the part of the petitioner. The unidentified vehicle was the cause of the accident. Under these circumstances, the petitioner who steps into the shoes of the first respondent / owner, not being a third party, is not entitled to claim compensation against the first respondent / owner. It is pertinent to cite here the decision of the Hon'ble Supreme Court in ***Ramkhiladi and Others Vs. The United India Insurance Company and Others [2020 (2) SCC 550]***. Relevant paragraph from the said judgment is as follows:

“5.9.Now, so far as the submission made on behalf of the claimants that in a claim under Section 163A of the Act mere use of the vehicle is enough and despite the compensation claimed by the heirs of the owner of the motorcycle which was involved in the accident resulting in his death, the claim under Section 163A of the Act would be maintainable is concerned, in view of the decision of this Court in Rajni Devi (supra), the aforesaid cannot be accepted. In Rajni Devi (supra), it has been specifically observed and held that the provisions of Section 163A of the Act cannot be said to have any application with regard to an accident wherein the owner of the motor vehicle himself is involved. After considering the decisions of this Court in the cases of Oriental



Insurance Co. Ltd. V. Jhuma Saha (2007) 9 SCC 263; Dhanraj (supra); National Insurance Co. Ltd. V. Laxmi Narain Dhut (2007) 3 SCC 700 and Premkumari v. Prahlad Dev (2008) 3 SCC 193, it is ultimately concluded by this Court that the liability under Section 163A of the Act is on the owner of the vehicle as a person cannot be both, a claimant as also a recipient and, therefore, the heirs of the owner could not have maintained the claim in terms of Section 163A of the Act. It is further observed that, for the said purpose, only the terms of the contract of insurance could be taken recourse to. In the recent decision of this Court in the case of Ashalata Bhowmik (supra), it is specifically held by this Court that the parties shall be governed by the terms and conditions of the contract of insurance. Therefore, as per the contract of insurance, the insurance company shall be liable to pay the compensation to a third party and not to the owner, except to the extent of Rs.1 lakh as observed hereinabove.”

12.1.Hence, the claim petition under Section 163(A) of the Motor Vehicles Act, 1988 is not maintainable against the Insurance Company.

13.As far as the personal accident cover is concerned, admittedly, as per the terms and conditions of the policy, only the owner – driver is entitled to claim compensation under the personal accident coverage policy. Since the policy does not cover the petitioner, who is not the owner – driver, the petitioner is not entitled to claim any amount.



14. In this regard, it is apposite to cite the judgment of this Court

in *National Insurance Co. Ltd., Vs. Rani and Others* [CMA No.1848 of 2017

decided on 12.03.2020], wherein it has been held as follows:

“10. 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.

11. 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



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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.

15.It is also apposite to cite the Judgment of the Hon'ble Division Bench of this Court in **Shanmugam's case** [M/s. Tata AIG general, Insurance Company Limited -vs- Shanmugam] in **C.M.A. No. 1395 of 2021** dated 19.08.2024 wherein, in Paragraph No.25, it has held as follows:-



“The question before us is whether a claim petition can be filed before the Claims Tribunal under Section 163A by an owner/insured. Considering the language of Chapter XI and the decision in Ramkhiladi's case, the first question is answered against the claimant by observing that an owner/insurer cannot approach the Motor Accident Claims Tribunal by filing a claim petition under Section 163A of the Motor Vehicles Act, 1988 for the injuries sustained by him relying upon the personal accident cover. This does not prevent the owner of a vehicle, who has taken a personal accident cover, from claiming compensation from his insurer. However, the Claims Tribunal is not the Forum, before which he can make his claim, as he is not a Third Party. It is open to the owner of the vehicle to directly approach the insurer on the basis of the personal accident cover. In case, the Insurance Company fails to compensate him, it is well open to him to approach the Consumer Forum or any other appropriate Forum. In view of the answer to the first question as referred to us, the second question does not arise for consideration.”

16. In these circumstances, on the strength of **Shanmugam's case** and **Rani's case**, this Court is of the considered view that the petitioners are not entitled to claim benefits under the personal accident coverage. Hence, the Tribunal is not right in awarding compensation under personal accident claim coverage policy and the same is liable to be set aside.

17. Accordingly, the Decree and Judgment dated November 26, 2021 made in M.C.O.P.No.188 of 2014 on the file of Motor Accidents Claims



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Tribunal (Additional Sub Court), Mayiladuthurai is set aside and consequently, C.M.A.No.1250 of 2022 is allowed. However, there shall be no order as to costs. Connected Civil Miscellaneous Petition is also closed.

18.The amount deposited by the appellant / Insurance Company, if any, to the credit of M.C.O.P.No.188 of 2014 on the file of Motor Accidents Claims Tribunal (Additional Sub Court) Mayiladuthurai is permitted to be withdrawn by the appellant / Insurance Company, by filing an appropriate application.

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Index : Yes
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Speaking order
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R.SAKTHIVEL, J.

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To

The Motor Accident Claims Tribunal
(Additional Sub Court)
Mayiladuthurai.

PRE-DELIVERY JUDGMENT MADE IN
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