IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.01.2024

CORAM:

THE HONOURABLE Mrs. JUSTICE R.KALAIMATHI

C.M.A.No.1977 of 2021
and
C.M.P.No.10680 of 2021

The Branch Manager,
The New India Assurance Co. Ltd.,
No.39C, Bve pass road,
Darmapuri – 636 701 ... Appellant

vs.

1.Settu @ Settu
2. Abdulsattar ... Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, to set aside the award dated 4th day of January 2021 made in M.C.O.P.No.124 of 2018, on the file of Motor Accident Claims Tribunal, (Special Sub Court), Dharmapuri.

For Appellant : Mr.S.Dhakshnamoorthy
For 1st Respondent : No Appearance
For 2st Respondent : On endorsement,

notice is dispensed with

JUDGMENT

Not being satisfied by the judgment and decree passed in M.C.O.P.No.124 of 2018 on the file of Motor Accident Claims Tribunal (Special Subordinate Court), Dharmapuri dated 04.01.2021. The Insurance Company has preferred this Civil Miscellaneous Appeal.

2. The claim petition was filed under Section 163 A of the Motor Vehicles Act, 1988, claiming compensation of Rs.5,00,000/- from the respondents, for the injuries sustained by him in a road accident that took place on 15.12.2017.

3. The Tribunal after evaluating the evidence passed an award for an amount of Rs.1,84,182/- with interest at the rate of 7.5% per annum from the date of the petition till the date of realisation.

4. The learned counsel Mr.S.Dhakshnamoorthy appearing for the appellant/2nd respondent vehemently argued that claimant herein has to be construed as borrower: The registered owner of the concerned vehicle is

the 1st respondent herein. The claimant has stepped into the shoes of the owner. The tortfeasor cannot maintain a claim petition under Section 163A.

5. To buttress his argument, the following decision was referred:-

Ramkhiladi and Ors. Vs. The United India Insurance Company and Ors. [(2020) 2 SCC 550] was referred in order to contend that, under Section 163 A of Motor Vehicles Act, cannot be said to have any application in respect of an accident, wherein, the owner of the motor vehicle himself is involved. The liability under Section 163 A of the Motor Vehicles Act is on the owner of the vehicle as a person cannot be both, a claimant and also a recipient with respect to claim and it was held that the legal heirs of the deceased could not maintain the claim in terms of Section 163 A of the Motor Vehicles Act.

6. Despite the receipt of notice, the 1st respondent/claimant remained absent.

7. At trial, the claimant has examined himself as P.W.1. And Exs.P.1 to P.10 were marked. On the side of the respondents Tmt.Gomathi was

examined as R.W.1. Copy of the final report filed by the Kambainallur Police Station in Crime No.200 of 2017, filed before the Harur Judicial Magistrate is Ex.R1.

8. It is the evidence of P.W.1 that on 15.12.2017 at about 7.30 p.m., while he was riding the two wheeler bearing Registration No.RJ 33 SB 7585 along the Kambinallur to Thippampatti Road, at the point of Vagurappatti lake bund, a dog suddenly crossed the road, due to which, he lost his balance and fell down. Due to which, he sustained injuries is not dispute.

9. On perusal of Ex.P1 copy of the FIR, it is discernible that at the instance of the elder brother of the claimant A.Sakkaraivel son of Allimuthu to the effect that, when his brother Settu was proceeding in the above said two wheeler, at the point of Vekurapatti lake bund, a dog suddenly crossed the road, his brother unexpectedly lost his balance, fell down and sustained injuries.

10. The 2nd respondent resisted the claim by filing a counter as follows. As per the claim petition, the petitioner himself fell down and sustained simple injuries. The accident happened due to the rash and

negligent manner of the driving of the petitioner. Therefore, the petitioner cannot claim compensation against the respondents.

11. It is pellucid from the evidence of P.W.1 and Ex.P.1 FIR, without any intervention of other vehicles while P.W.1 was riding, the above said two wheeler met with the road accident by falling down and sustained injuries. The 1st respondent is the owner of the said vehicle. The two wheeler as per the claim petition and Ex.P.5 copy of the registration certificate of the two wheeler, wherein the name of the 1st respondent is Abdul Sattar son of Sh.Nathu Khan is shown as the owner of the above said two wheeler.

12. It is relevant to note that in ***Dhanraj Vs. New India Assurance Co. Ltd. [(2004) 8 SCC 553]***, the Hon'ble Supreme Court has observed that 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. It is further held that Section 147 does not require an insurance company to assume risk for death or bodily injury to the owner of the

vehicle.

13. In ***oriental Insurance Co. Ltd. Vs. Rajini Devi [(2008) 5 SCC 736]*** the Hon'ble Apex Court held that the compensation is claimed for the death of the owner or another passenger of the vehicle, the contract of insurance being governed by the contract qua contract, the claim of the insurance company would depend upon the terms thereof. It has been observed by the Hon'ble Apex Court that the liability under Section 163 A of the Act is on the owner of the vehicle, as a person cannot be both, a claimant as also recipient.

14. In ***Ningamma and Anr. Vs. United India Insurance Co. Ltd., [2009 (13) SCC 710]*** the Hon'ble Apex Court held that the owner of the vehicle or his legal representative or the borrower of the vehicle cannot raise the claim for an accident in which, there was no negligence on the part of the insured vehicle. It has been held that the borrower of the vehicle stepped into the shoes of the owner and therefore, the borrower of the vehicle or his legal representatives are not entitled to compensation from the insurer for the act.

15. As per the Section 163 A of the Motor Vehicles Act, the claimant need not to plead and prove the negligence.

16. From the careful perusal of the claim petition, FIR and P.W.1, it is made clear that the claimant who was a borrower from the 1st respondent, while riding the two wheeler, because of the negligence, he met with the accident without any intervention of other vehicle and sustained injuries. In Ex.B2 Discharge Summary issued by the Neuro Foundation, Salem, the details of the accident is not found. At the first instance, the claimant was given treatment by the Government Hospital, Dharmapuri. The said treatment record was not filed by the claimant. At the instance of the elder brother of the claimant, FIR was registered in the name of the claimant Settu under Section 279 and 337 of IPC. From the above said details, it has to be construed that the claimant is the borrower of the 1st respondent vehicle and he gets into the shoes of the owner.

17. There is no plausible explanation made by the claimant on what basis he used the vehicle of the 1st respondent. From the available details as mentioned supra and from the evidence of P.W.1, the claimant has to be construed as borrower of the insured vehicle. If that be the case, as per

Section 147 of the Motor Vehicles Act, he is not covered under the policy. In this regard, it is useful to refer the observation given by the Hon'ble Supreme Court in the case of ***New India Assurance Co. Ltd. Vs. Sadanand Mukhi [(2009) 2 SCC 417]*** wherein, it was held that the mere rider of the two wheeler is not required to be covered under Section 147 and is not covered under a Motor Policy.

18. The law is settled that Section 163 A of the Motor Vehicles Act cannot be said to have any application in respect of an accident, wherein the owner of the motor vehicle himself is involved. He would elaborate further, under Section 163 A of the Motor Vehicles Act, the liability is on the owner of the vehicle. The borrower stepped into the shoes of the owner. Then, the claimant cannot be a recipient with respect to the claim. The claimant himself has not stated that he is an employee of the owner of the two wheeler.

19. As per the Section 147 of the Act, personal accident coverage can be claimed by the registered owner of the vehicle. The mandatory 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.

20. The Hon'ble Supreme Court in ***Ramkhiladi and Ors. Vs. The United India Insurance Company and Ors. [(2020) 2 SCC 550]***, the scope of claim petition under Section 163 A of the Motor Vehicles Act has been dealt with in detail. The Hon'ble Apex Court has also held that the special provisions namely Section 147, 166 and 163 A of the Motor Vehicles Act have to be read conjointly and inconsonance with the object of the act.

21. Based on the aforesaid discussions, this Court is of the view that as held by the Hon'ble Supreme Court as mentioned supra, in a claim under Section 163 A of the Act, though the claimant need not to plead or prove the negligence, he cannot maintain a claim under Section 163 A of the Act against the owner and insurer of the vehicle as he has to be construed to be borrower and he has stepped into the shoes of the owner. As per the contract of insurance, liability of the insurance company would be as per the terms and conditions of the contract of the insurance. The

Civil Miscellaneous Appeal stands allowed. Therefore, the judgment dated 04.01.2021 passed by the Motor Accident Claims Tribunal in M.C.O.P.No.124 of 2018 stands set aside. The Insurance Company is permitted to withdraw the amount which is already deposited. Connected, miscellaneous petition is closed. No costs.

29.01.2024

Index : Yes/No
Speaking / Non-speaking order
mac

R.KALAIMATHI, J.,

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To:

1. The Motor Accident Claims Tribunal, Dharmapuri

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

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