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C.M.A. No. 3590 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 10 / 07 / 2024

JUDGMENT PRONOUNCED ON : 29 / 08 / 2024

CORAM

THE HONOURABLE MR. JUSTICE R.SAKTHIVEL

C.M.A.NO.3590 OF 2021
AND C.M.P.NO.21025 OF 2021

M/s.United India Insurance Co. Ltd.,
Branch Office,
Pallivasal Street,
Perambalur.

... Appellant / Respondent – 2
Vs.

1.Lakshmi,
W/o. Late Murugesan

2. Murugayee,
W/o. Sundararaju

...Respondent –1&2 / Petitioners–1&2

3. Kannan,
S/o. Kailangiri

... Respondent – 3 / Respondent – 1

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, praying to set aside the award dated 02.11.2020 passed in M.C.O.P. No. 747 of 2015 on the file of the Motor Accidents Claims Tribunal (Principal District Judge), Perambalur.

For Appellant : Mr. J.Chandran
For Respondents : No Appearance

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This Civil Miscellaneous Appeal is directed against the Award dated 02.11.2020 made in M.C.O.P. No. 747 of 2015 on the file of 'the Motor Accidents Claims Tribunal (Principal District Judge), Perambalur' [henceforth 'Tribunal']. The appellant herein is the 2nd respondent before the Tribunal.

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

Petitioners' case:-

3.The 1st petitioner is the wife and the 2nd petitioner is the mother of deceased - Murugesan. The case of the petitioners is that on 05.08.2013 at about 21.30 hours, the deceased - Murugesan was riding the 1st respondent's Hero Honda Splendor Motorcycle bearing Registration No. TN-65-Y-5311 on Parthibanoor to Kamuthi main road in North to South direction. While he approached Karuvattulendal Vilakku, the deceased - Murugesan lost control due to tyre burst and collided with a road roller stationed on the right side of the road facing south. Due to the accident, the deceased - Murugesan sustained fatal injuries and passed away.

4.An First Information Report (FIR) in Crime No. 121 of 2013 under Section 304A of Indian Penal Code, 1860 (IPC) was registered by the



Parthibanoor Police Station. According to the petitioners, the deceased - Murugesan was working under the 1st respondent. At the time of accident, the deceased, on instruction of the 1st respondent, had gone to purchase pesticides. Accordingly, the petitioners prayed to award compensation against the 2nd respondent.

1st Respondent's Case:-

5.The 1st respondent did not choose to contest the Original Petition. Hence, he was called absent and set *ex parte* before the Tribunal.

2nd respondent's case:-

6.The 2nd respondent, who is the insurer of the 1st respondent's motorcycle bearing Registration No. TN-65-Y-5311, filed a counter stating that the accident occurred entirely due to the rash and negligent riding of the deceased - Murugesan and denied the manner of accident. It is stated that the deceased invited the accident through his own negligence and the same is evident from the FIR and the Final Report filed by the Parthibanoor Police Station. It is further stated that the Tribunal lacked jurisdiction to deal with the case. Accordingly, the 2nd respondent - Insurance Company prayed to dismiss the original petition.



Witnesses and documents:-

7. At trial, the 1st petitioner was examined as P.W.1 and one Karunanithi was examined as P.W.2 and Exs-P.1 to P.8 were marked on the side of the petitioners. Neither any witness was examined, nor any document was marked on the side of the respondents.

Findings of the Tribunal:-

8. The Tribunal found that the case of the petitioners is proved and the deceased - Murugesan died only due to the road accident that occurred on 05.08.2013 at about 21.30 hours and that the 1st respondent's vehicle bearing Registration No.TN-65-Y-5311 was insured with the 2nd respondent at the time of accident. Therefore, the 2nd respondent is liable to pay compensation to the petitioners under Section 163-A of the Motor Vehicles Act, 1988. Accordingly, the Tribunal has awarded a sum of Rs.5,00,000/- as compensation payable to the petitioners by the 2nd respondent.

9. Feeling aggrieved with the said award passed by the Tribunal, the 2nd respondent – Insurance Company has preferred this Civil



Miscellaneous Appeal.

Arguments:-

10.Mr.J.Chandran, learned Counsel for the appellant would argue that the petition is not maintainable under Section 163-A of the Motor Vehicles Act, 1988 as the deceased - Murugesan, being the borrower of the first respondent's vehicle, stepped into the shoes of the owner (1st respondent) and hence, not a third party. Therefore, he is not entitled to claim compensation under Section 163-A of the Motor Vehicles Act, 1988. The Tribunal miserably failed to appreciate the evidence and the legal position properly. Accordingly, he prayed to allow the Civil Miscellaneous Appeal and dismiss the original petition.

10.1.In support of his submissions, he relied on the following judgments:-

(i)Judgment of this Court in ***Kaliamoorthy -vs- Velmurugan*** in ***C.M.A. No. 504 of 2012 dated 27.08.2020.***

(ii) Judgment of this Court in ***The Oriental Insurance Company Limited -vs- B.Balamurugan*** in ***C.M.A. No. 370 of 2015 dated 23.03.2021.***



(iii) Judgment of this Court in *United India Insurance Company Ltd., -vs- Deepa* in C.M.A. No. 936 of 2024 dated 20.06.2024.

11.In response to the above arguments, learned Counsel appearing for the respondents submitted that since the first respondent's motorcycle is involved in the accident, the claim petition is maintainable, and the 2nd respondent, being the insurer of the 1st respondent's vehicle, is liable to pay compensation. Accordingly, he prayed to sustain the award of the Tribunal.

Discussion and Decision:-

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

13.Admittedly, the original petition was filed under Section 163-A of the Motor Vehicles Act, 1988. On 05.08.2013 at about 21.30 hours, the deceased - Murugesan was riding the 1st respondent's Hero Honda Splendor Motorcycle bearing Registration No.TN-65-Y-5311 on the Parthibanoor to Kamuthi main road in North to South direction. As he approached Karuvattulendal Vilakku, due to tyre burst, the deceased - Murugesan lost his control and dashed against a road roller facing south



stationed on the right side of the road. Due to the accident, the deceased - Murugesan sustained fatal injuries and passed away. There is no dispute with regard to the above facts.

14.The petitioners did not choose to add the owner of the vehicle which was allegedly stationed on the roadside as a respondent. From the evidence of P.W.2 and the First Information Report (FIR), it is evident that the accident occurred due to the tyre burst of the vehicle rode by the deceased - Murugesan. But the vehicle was not subjected to the inspection by the Motor Vehicle Inspector. The petitioners claimed compensation against the owner of the motorcycle, claiming that accident was caused while the deceased, being the 1st respondent's servant, was riding the 1st respondent's vehicle in the course of employment. However, the petitioners have not proved the alleged employer-employee relationship between the deceased and the first respondent. In such a scenario, this Court can only treat the deceased as a borrower of the first respondent's vehicle. As a borrower of the 1st respondent's vehicle, the deceased - Murugesan stepped into the shoes of the 1st respondent - owner. Thus, he is not a third party.

15.The question for consideration is, whether the borrower of vehicle is entitled to claim compensation against the owner of the borrowed



vehicle under Section 163-A of the Motor Vehicles Act, 1988. This issue is no longer *res integra* in view of the Hon'ble Apex Court Judgment in ***Ramkhiladi's case*** [*Ramkhiladi and another -vs- United India Insurance Co. Ltd., and another* reported in 2020 ACJ 627]. Facts of the case as narrated in Paragraph No.2.1 are as follows:-

“2.1. That in a vehicular accident which occurred on 2-10-2006, one Chotelal alias Shivram died. The deceased was travelling on motorcycle bearing Registration No. RJ 02 SA 7811. At this stage, it is required to be noted that, even as per the claimants, the accident occurred on account of rash and negligent driving of the driver of another motorcycle bearing Registration No. RJ 29 2M 9223. That the appellants herein filed a claim petition before the Motor Accidents Claims Tribunal, Laxmangarh (Alwar), Rajasthan (hereinafter referred to as “the learned Tribunal”) under Section 163-A of the Motor Vehicles Act (hereinafter referred to as “the Act”). At this stage, it is required to be noted that the claim petition was preferred only against the owner of the motorcycle bearing Registration No. RJ 02 SA 7811 and its insurance company. Neither the driver nor the owner or the insurance company of the vehicle bearing Registration No. RJ 29 2M 9223 were joined as opponents in the claim petition. Therefore, as such, no claim petition was filed against the driver, owner and the insurance company of the vehicle involved in the accident i.e. motorcycle bearing Registration No. RJ 29 2M 9223. That an objection was raised by the respondent-insurance company, insurer of motorcycle bearing Registration No. RJ 02 SA 7811 that as according to the



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claimants and even so stated in the FIR, the driver of the motorcycle bearing Registration No. RJ 29 2M 9223 was rash and negligent and the claimants have not filed the claim petition against the owner of the said vehicle, the claim petition is required to be dismissed against the insurance company of the motorcycle bearing Registration No. RJ 02 SA 7811.”

16.The Hon'ble Apex Court in Paragraph No.5, has framed a question as follows:-

“The short question which is posed for consideration of this Court is whether, in the facts and circumstances of the case and in a case where the driver, owner and the insurance company of another vehicle involved in an accident and whose driver was negligent are not joined as parties to the claim petition, meaning thereby that no claim petition is filed against them and the claim petition is filed only against the owner and the insurance company of another vehicle which was driven by the deceased himself and the deceased being in the shoes of the owner of the vehicle driven by himself, whether the insurance company of the vehicle driven by the deceased himself would be liable to pay the compensation under Section 163-A of the Act? Whether the deceased not being a third party to Vehicle No. RJ 02 SA 7811 being in the shoes of the owner can maintain the claim under Section 163-A of the Act from the owner of the said vehicle?”

17.The Hon'ble Apex Court has answered the question, in Para No.5.9 as follows:-



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“Now, so far as the submission made on behalf of the claimants that in a claim under Section 163-A 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 163-A of the Act would be maintainable is concerned, in view of the decision of this Court in Rajni Devi [Oriental Insurance Co. Ltd. v. Rajni Devi, (2008) 5 SCC 736 : (2008) 3 SCC (Cri) 67] , the aforesaid cannot be accepted. In Rajni Devi [Oriental Insurance Co. Ltd. v. Rajni Devi, (2008) 5 SCC 736 : (2008) 3 SCC (Cri) 67] , it has been specifically observed and held that the provisions of Section 163-A 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 Oriental Insurance Co. Ltd. v. Jhuma Saha [Oriental Insurance Co. Ltd. v. Jhuma Saha, (2007) 9 SCC 263 : (2007) 3 SCC (Cri) 443] ; Dhanraj [Dhanraj v. New India Assurance Co. Ltd., (2004) 8 SCC 553 : 2005 SCC (Cri) 363] ; National Insurance Co. Ltd. v. Laxmi Narain Dhut [National Insurance Co. Ltd. v. Laxmi Narain Dhut, (2007) 3 SCC 700 : (2007) 2 SCC (Cri) 142] and Premkumari v. Prahlad Dev [Premkumari v. Prahlad Dev, (2008) 3 SCC 193 : (2008) 1 SCC (Civ) 822 : (2008) 1 SCC (Cri) 694] , it is ultimately concluded by this 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 a recipient and, therefore, the heirs of the owner could not have maintained the claim in terms of Section 163-A of the Act. It is further observed that, for the said purpose, only the terms of the



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contract of insurance could be taken recourse to. In the recent decision of this Court in Ashalata Bhowmik [National Insurance Co. Ltd. v. Ashalata Bhowmik, (2018) 9 SCC 801 : (2018) 4 SCC (Civ) 595 : (2019) 1 SCC (Cri) 399] , 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.”

18. **Ramkhiladi's case** has been followed by this Court in,

- i) **United India Insurance Company Ltd., -vs- Deepa and others** in **C.M.A. No. 936 of 2024** dated 20.06.2024;
- ii) **The Branch Manager -vs- R.Jothi** in **C.M.A. No. 3053 of 2017** dated 26.04.2022;
- iii) **The Oriental Insurance Company Limited -vs- B.Balamurugan** in **C.M.A. No. 370 of 2015** dated 23.03.2021; and
- iv) **Kaliamoorthy -vs- Velmurugan** in **C.M.A. No. 504 of 2012** dated 27.08.2020.

18.1. In view of the above legal position, the petitioners are not entitled to claim compensation under Section 163-A of the Motor Vehicles Act, 1988 against the owner of the borrowed vehicle, since the deceased - Murugesan being a borrower of vehicle, steps into the shoes of the 1st respondent - owner and hence, not a third party.

Conclusion:-



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19. In view of the above legal position, this Court is inclined to allow the Civil Miscellaneous Appeal. Accordingly, the Civil Miscellaneous Appeal is allowed by setting aside the Award dated 02.11.2020 made in M.C.O.P.No.747 of 2015 on the file of the Motor Accidents Claims Tribunal (Principal District Judge), Perambalur. If any amount has been deposited by the appellant, the same is permitted to be withdrawn. No costs. Connected C.M.P is closed.

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Index : Yes
Speaking Order : Yes
Neutral Citation : Yes

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To

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