IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.11.2024

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.No.325 of 2021
And
C.M.P.No.2227 of 2021

The Divisional Manager,
United India Insurance Company Limited
Motor Third Party Claim Office,
Residing at No.66, 68 Gandhi Road,
Kanchipuram. ... Appellant

Vs.

1.S.Sangeetha
2.Minor.S.Rutheeswaran
Rep. by Mother and Natural Guardian
the first respondent herein
3.K.Kumari
4.V.Kumar
5.V.Suresh

(V respondent remained exparte in
the lower Court and therefore notice
may be dispensed with) ... Respondents

Prayer:

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the judgment and decree dated 28.03.2019 passed in M.C.O.P.No.471 of 2015, by the District and Sessions Judge, Fast Track Court, Kanchipuram.

For Appellant : M/s.R.Rathna Thara
For Respondents : Mr.M.Sivakumar for R1 to R4
R5 – Exparte vide in EB

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 28.03.2019 passed by the Motor Accidents Claims Tribunal, District and Sessions Judge, Fast Track Court, Kanchipuram, in M.C.O.P.No.471 of 2015.

2.The learned counsel appearing for the appellant submitted that the dependants of the deceased/ claimants filed claim petition before the Motor Accidents Claims Tribunal, claiming compensation of Rs.10 Lakhs alleging that on 16.11.2010 at about 3.45 p.m., the deceased K.Simbu @ Silambarasan was riding the motorcycle bearing Registration No.TN-20-BV-0993 belonging to the fifth respondent in Chennai to Bangalore Highways Road near Johnson Lift Company in a rash and negligent manner and tried to overtake a lorry and lost control over the motorcycle and hit against the left side service road grill median, due to which, the deceased died on the spot. After adjudication, the Tribunal awarded a sum of Rs.5,00,000/- as compensation to the claimants along with interest at 7.5% p.a. from the date of the petition 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 as per the policy the owner cum driver is entitled for claim under the personal accident coverage on three grounds, i.e., if the owner himself driven the vehicle; the owner cum driver is the registered owner of the vehicle insured and the policy must stand in the name of the owner of the vehicle; and the owner of the vehicle must possess valid driving licence in accordance with the provisions of law.

4.The learned counsel appearing for the appellant further submitted that in the present case, the deceased himself is a tort feasor, he borrowed the vehicle from the fifth respondent and he drove the vehicle in a rash and negligent manner and fell down and sustained fatal injuries and further submitted that the deceased is not the owner of the vehicle. Hence, the claimants are not entitled to file claim petition under Section 163 A of the Motor Vehicles Act. In support of his contentions, the learned counsel relied upon the decision of this

Court reported in ***2020 (1) TN MAC 593 [National Insurance Company Limited Vs. Rani and others]***.

5.The learned counsel appearing for the respondents 1 to 4/ claimants submitted that the deceased borrowed the vehicle from the fifth respondent and the deceased may have lost his life due to his negligence, even then, the claimants are entitled to claim compensation under Section 163 A of the Motor Vehicles Act. The learned counsel further submitted that the Tribunal awarded compensation as per Schedule II of the Motor Vehicles Act in terms of Section 163 A of the Motor Vehicles Act, 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.The accident and the manner in which the accident happened are not disputed. Admittedly, the deceased borrowed the vehicle from the fifth respondent. The issue that arise for consideration in this appeal is whether the borrower of the vehicle is entitled for compensation in terms of Section 163 A and Schedule II of the Motor Vehicles Act.

8.The issued involved in the present case is covered by the decision of this Court reported in ***2020 (1) TN MAC 593 [National Insurance Company Limited Vs. Rani and others]***, the relevant portion of the same reads as follows:

> *"9. 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.*
>
> *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 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.*

12.This Court is of the considered opinion that the Insurance Company as well as the Policy Holders are bound by the terms and conditions of the contract agreed between the parties. In the event of superseding the terms of contract, then the very legality of the Law of Contract is sacrificed under the provisions of the Indian Contract Act, which is unacceptable and therefore, in respect of the contract, Courts are bound to consider the terms and conditions and the binding clauses between the parties.

13. The Hon'ble Supreme Court in the judgment, cited supra, in unequivocal terms held that in a claim under Section 163-A 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 163-A 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 163-A 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 163-A of the Act, against the owner and Insurer of the vehicle. In the case before the Hon'ble Supreme Court, the finding was that 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. Thus the deceased cannot be said to be a third party with respect to the insured vehicle. 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. The insurance policy covers the liability incurred by the insured in respect of death 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. Thus Section 147 does not require an Insurance Company to assume risk for death or bodily injury to the owner of the vehicle."*

9.Perusal of the decision cited supra makes it clear that for claim under the personal accident coverage, the owner - driver must be the registered owner of the vehicle insured; the owner - driver is the insured named in the policy; the owner - driver holds an effective driving license, in accordance with the provisions of Law. Though the deceased possess valid driving licence, the deceased is the borrower of the vehicle and he is not the owner of the vehicle and the insurance policy does not stand in the name of the deceased.

10.Further, the deceased has to be a third party and cannot maintain a claim under Section 163-A 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 163-A of the Act, against the owner and Insurer of the vehicle. Hence, the claimants are not entitled to file claim petition under Section 163 A of the Motor Vehicles Act. Without considering these factual aspects, the Tribunal has passed award, which is not sustainable one.

11.In view of all the above, this civil miscellaneous appeal is allowed. The judgment and decree dated 28.03.2019 passed by the Motor Accidents Claims Tribunal, District and Sessions Judge, Fast Track Court, Kanchipuram, in M.C.O.P.No.471 of 2015, 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.

26.11.2024

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

To

1.The Motor Accidents Claims Tribunal,
District and Sessions Judge,
Fast Track Court,
Kanchipuram.

M.DHANDAPANI,J.
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