IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.02.2024

CORAM:

THE HONOURABLE MR. JUSTICE K. RAJASEKAR

C.M.A. No.2537 of 2021
and C.M.P. No. 14560 of 2021

M/s. The New India Assurance
Company Limited,
Divisional Office,
No.179, III floor,
Jawaharlal Nehru Street,
Puducheri ... Appellant / 2nd Respondent

Vs.

1. Kanniyappan ... 1st Respondent/ Petitioner

2. Janakiraman ... 2nd Respondent / 1st Respondent

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Order dated 06.03.2021 passed in M.C.O.P. No. 188 of 2018 on the file of III Additional District Judge, Motor Accident Claims Tribunal, Kallakurichi.

For Appellant	:	M/s. J. Michael Visuvasam
For R1	:	M/s. S. Shrish (for N. Manokaran)
For R2	:	No Appearance

JUDGMENT

This Civil Miscellaneous appeal has been filed by the insurance company challenging the liability fixed on them to pay compensation to the claimant, who sustained injuries in the road accident. On 26.01.2018, at about 7:45 AM, while he was riding a car TATA Indica car bearing Registration No.TN-25-M-3339 towards Athiyur forest, at that time, the car tyre has burst, thereby the claimant has lost his control, dashed against the tree and sustained grievous injuries. A criminal case in Cr.No.46 of 2018 u/s.279 and 337 of IPC was filed against the claimant on the file of Kootu Salai Police station. For the injuries sustained, the claimant has filed claim petition seeking compensation for a sum of Rs.10,00,000/- by invoking section 163-A of the Motor Vehicles Act, 1988.

2. For the sake of convenience, the parties are referred herein according to their litigative status and rank before the Tribunal.

3. The first respondent, who is the owner of the car has not contested the claim and remained ex-parte. The second respondent - insurance company, who is the insurer of the car has filed a counter and

contended that the claimant himself is a tortfeasor and he is not entitled to claim compensation and further disputed the disability sustained due to accident, age, occupation and income of the claimant and the compensation claimant under various heads is excessive.

4. The Tribunal after considering the evidence, accepted the case of the claiamnts and awarded compensation of Rs.4,13,400/- along with interest @ 7.5% per annum from the date of filing of petition till the date of realization and fixed the liability on the part of the insurance company to indemnify the first respondent and to pay compensation to the claimant.

5. Aggrieved over the award, the insurance company has filed this appeal challenging the liability fixed on them. The claimant and other respondent have not come forward with any appeal challenging the award.

6. The learned counsel for the insurance company submitted that there was no involvement of any third party vehicle in the accident and the occurrence has taken place only due to burst of car tyre, thereby the claimant has sustained injuries, since he steps into the shoes of the owner,

he is not entitled to get any compensation. He also further submitted that the contract entered between the owner of the car and the insurer is to pay compensation for the schedule injuries stated in the contract and the injuries sustained by the claimant is not a schedule injury, hence the insurance company is not liable to pay compensation.

7. Per contra, the learned counsel for the claimant submitted that, as per the Hon'ble Apex Court in ***United India Insurance Company Limited vs. Sunil Kumar and another [(2019) 12 SCC 398]***, it has been clarified that in a proceeding under section 163-A of the Motor Vehicle Act, 1988, the insurance company is not entitled to raise any defence regarding the negligence on the part of the victim. He further submitted that the claimant herein is a third party to the contract and since he suffered injuries in a motor accident, he is entitled to get compensation under section 163-A of the Motor Vehicles Act.

8. I have considered the submissions made on both sides and perused the materials available on record.

9. The Hon'ble Apex Court in ***United India Insurance Company Limited vs. Sunil Kumar and another [(2019) 12 SCC 398]***, has made a reference to the two-Judge Bench of the Supreme Court in ***National Insurance Co. Ltd., vs. Sinitha [(2012) 2 SCC 356]*** on the following question of law:

> *"Whether in a claim proceeding under Section 163-A of the Motor Vehicles Act, 1988 (herin after referred to as 'the Act') ist is open for the insurer to raise the defence/ plea of negligence?"*

10. After considering the question of law, it is held by the Apex Court, in paragraph 8 and 9 as follows:

> *"8. From the above discussion, it is clear that grant of compensation under Section 163-A of the Act on the basis of the structured formula is in the nature of a final award and the adjudication thereunder is required to be made without any requirement of any proof of negligence of the driver/ owner of the vehicles(s) involved in the accident. This is made explicit by Section 163-A(2). Though the aforesaid section of the Act does not specifically exclude a possible defence of the insurer based on the negligence of the claimant as contemplated by Section 140(4), to permit such defence to be introduced by the insurer and/ or to understand the provisions of Section 163-A of the Act to be contemplating any such situation would go contrary to the very legislative object behind introduction of Section 163-A of the Act, namely, final compensation within a limited time-frame on the basis of the structured formula to overcome situations where the claims of compensation on the basis of fault liability were taking an unduly long time. In fact,*

to understand Section 163-A of the Act to permit the insurer to raise the defence of negligence would be to bring a proceeding under Section 163-A of the Act on a par with the proceeding under Section 166 of the Act which would not only be self-contradictory but also defeat the very legislative intention.

9. For the aforesaid reasons, we answer the question arising by holding that in a proceeding under Section 163-A of the Act, it is not open for the insurer to raise any defence of negligence on the part of the victim."

11. The Hon'ble Apex Court in the above judgment has categorically held that the insurance company is not entitled to take a defence on the part of the victim. The Hon'ble Apex Court in ***Ram Khiladi and another vs. the United India Insurance Co. Ltd. and another [2020 (1) TNMAC 1 (SC)]***, has considered an issue that, whether the owner of the vehicle or the person, who steps into the shoes of the owner is entitled to claim compensation under section 163-A and also whether the insurance company is entitled to raise a defence of negligence on the part of the claimant, who steps into the shoes of the owner. Answering the same after considering the previous judgment of the Apex Court in paragraph 5.5 has held as follows:

"5.5. 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."

12. In the above paragraph, the Apex Court has held that the person, who borrows the vehicle steps into the shoes of the owner, hence he is not a third party to the policy and further held in paragraph 9.5 as follows:

"9.5. It is true 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 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 qua third party only. In the present case, as observed herein above, 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 Dhanraj vs. New India Assurance Co. Ltd.,[(2004) 8 SCC 553], 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 authorised 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."

13. The facts of the present case squarely applicable as per the observations made by the Apex Court in ***Ram Khiladi case*** cited supra and I am of the view that in this case, the claimant has sustained injury without

involvement of any third party vehicle and also steps into the shoes of the owner. In section 147 of the Motor Vehicles Act, the owner himself is not entitled to claim compensation from the insurance company by invoking section 163-A, stating that he need not prove the negligence for the injuries sustained by him.

14. The Apex Court in ***United India Insurance Company Limited vs. Sunil Kumar and another*** cited supra, has held that the insurance company is not entitled to take any defence of negligence on the part of the victim. However, as per the section 147 of the Motor Vehicles Act, as interpreted by the Apex Court that the claimant, who is a tortfeasor and steps into the shoes of the owner is not entitled to claim compensation. Since, the facts of the present case squarely applicable to the observations made by the Apex Court in ***Ram Khiladi case*** cited supra, this Court is inclined to absolve the insurance company from paying compensation to the claimant.

15. In the result, this Civil Miscellaneous Appeal is allowed. Consequently, connected civil miscellaneous petition stands closed. The

Insurance Company is entitled to withdraw the compensation amount, if any already deposited. Consequently, connected civil miscellaneous petition stands closed. No cost.

22.02.2024

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Index:Yes/No
Speaking Order:Yes/No
Neutral Citation Case: Yes/No

To:

1. The III Additional District Judge,
   Motor Accident Claims Tribunal,
   Kallakurichi.

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

K. RAJASEKAR, J.

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