IN THE HIGH COURT OF JUDICATUE AT MADRAS

DATED: 03.06.2024

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THE HONOURABLE **MR. JUSTICE ABDUL QUDDHOSE**

**C.M.A.No.2156 of 2022**

TATA AIG General Insurance Company Limited,
1st Floor, Rajendra Building,
No.10A, Duraisami Pillai Street,
West Thambaram, Chennai. .. Appellant

Vs

1.C.Kumar
2.Irudayadass .. Respondents

Prayer: This Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the decree and judgment dated 25.04.2022, made in M.C.O.P.No.220 of 2018, on the file of the Motor Accident Claims Tribunal, III Additional District Court, Villupuram@Kallakurichi.

For Appellant : Mr.M.B.Raghavan
for M/s.M.B.Gopalan Associates

For Respondents : No appearance

**JUDGMENT**

This appeal has been filed by the Insurance Company challenging its liability to pay compensation to the first respondent/claimant on the following grounds:-

(a) The Tribunal has erred in entertaining a claim under Section 163A of the Motor Vehicles Act, 1988, as the first respondent/claimant was a tortfeasor, who was driving the vehicle himself, and suffered accident and therefore, no claim for compensation is maintainable in law.

(b) The Tribunal has failed to appreciate that the owner of the vehicle has no liability in law on account of the fact that the injuries have been sustained by the rider himself, who steps into the shoes of the owner in using the vehicle.

(c) The Tribunal has erroneously held that under Section 163A of the Motor Vehicles Act, the claim of the first respondent/claimant is maintainable, despite the fact that the Hon'ble Supreme Court, in Ramkhiladi and another Vs. United India Insurance Co. Ltd. and another [2020 ACJ 627], followed by subsequent decisions, has consistently held otherwise.

2. The following facts are not in dispute:-

(a) The first respondent/claimant had borrowed the vehicle from the second respondent, who is the owner of the vehicle (insured), and he himself is a tortfeasor, as seen from the FIR, marked as Ex.P1.

(b) The claim for compensation has been made by the first respondent/claimant under Section 163A of the Motor Vehicles Act.

3. It is settled law that since the first respondent/claimant has borrowed the vehicle from the owner, he steps into the shoes of the owner. Being a tortfeasor himself, the first respondent/claimant cannot claim compensation from the appellant Insurance Company even under Section 163A of the Motor Vehicles Act, since the insurance policy does not enable the first respondent/claimant to claim compensation from the appellant insurance company.

4. As per the decision of the Hon'ble Supreme Court in ***Ramkhiladi's case (cited supra),*** the claim of the nature made by the first respondent/claimant in the instant case is not maintainable under law, as he is not a third party, since he has borrowed the vehicle from the insured and further he is also a tortfeasor as seen from the FIR, marked as Ex.P1. Further, the Tribunal has erroneously in the impugned award, without any basis and contrary to law, held that Section 163A of the

Motor Vehicles Act gets attracted for the claim made by the first respondent/claimant.

5. For the foregoing reasons, this Court is of the considered view that the impugned award is perverse and is contrary to the settled law and no compensation can be paid to the first respondent/claimant, since the first respondent/claimant is not a third party as he has stepped into the shoes of the owner in view of the undisputed fact that he had borrowed the vehicle from the second respondent/owner (insured).

6. In the result, the impugned award is set aside and the Civil Miscellaneous Appeal is allowed. No Costs. C.M.P.No.16729 of 2022 is closed.

**03.06.2024**

Index: yes/no
Neutral citation: yes/no
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To

Motor Accidents Claims Tribunal,

III Additional District Judge,
Kllakurichi.

**ABDUL QUDDHOSE,J.**

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**03.06.2024**