IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.07.2024

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THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

CMA No.2767 of 2023

1.S.Vasanthi

2.S.Prabha

3.S.Kirthika ..Appellants

.vs.

1.S.Dhandapani

2.United India Insurance Co.,Ltd.,
Third Party Service Hub
Plot No.35, 36, 37, AR Plaza
45, Feet Road, Balaji Nagar Extn.,
Saram, Puducherry-605 011. ..Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the award in judgement and Decree dated 06.02.2023 made in MCOP No.65 of 2018, on the file of the Motor Accident Claims Tribunal/C.J.M. Court, Cuddalore.

For Appellants : Mrrs.Ramya V. Rao

For Respondents : Mrs.I.Malar [R2]

JUDGMENT

This appeal has been filed by the claimants against the award passed by the Motor Accident Claims Tribunal/C.J.M Court, Cuddalore, in MCOP No.65 of 2018, dated 06.02.203, dismissing the claim petition.

2.The case of the claimants is that the deceased Senthamaraikannan on 30.10.2016, was riding a two wheeler which belongs to the 1st respondent at Virudhachalam – Cuddalore Main Road and at about 11.00 p.m., a cow all of a sudden crossed the road and the deceased applied break and lost control. He fell down and sustained fatal injuries. It is under these circumstances, the claim petition came to be filed before the Tribunal under Section 163A of the Motor Vehicles Act, 1988.

3.The Tribunal on considering the facts and circumstances of the case and on appreciation of evidence came to a conclusion that the deceased was not a third party and therefore, the claimants cannot claim for compensation from the insurance company. Accordingly, the claim petition came to be dismissed by the Tribunal.

4.The claimants aggrieved by the award passed by the Tribunal, have filed the present appeal before this Court.

5.Heard Mrs.Ramya V. Rao, learned counsel for the appellants and Mrs.I.Malar, learned counsel for the 2nd respondent - Insurance Company.

6.This Court has carefully considered the submissions made on either side and the materials available on record. This Court has also carefully gone through the award passed by the Tribunal.

7.The issue that is involved in the present appeal is squarely covered by the earlier judgment of this Court in **Sivagami and another .v. K.Priya and another** reported in **2024 2 TANMAC 46.** The relevant portions are extracted hereunder :

> *5. The issue that is involved in the present appeal is squarely covered by the judgement of the Apex Court in **[Ramkhiladi and another Vs. United India Insurance Company and another]** reported in **2020 2 SCC 550.** The relevant portions are extracted hereunder :-*
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> *9.5 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 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 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.

9.6 In view of the above and for the reasons stated above, in the present case, as the claim under Section 163A of the Act was made only against the owner and insurance company of the vehicle which was being driven by the deceased himself asborrower of the vehicle from the owner of the vehicle and he would be in the shoes of the owner, the High Court has rightly observed and held that such a claim was not maintainable and the claimants ought to have joined and/or ought to have made the claim under Section 163A of the Act against the driver, owner and/or the insurance company of the offending vehiclei.e. RJ 29 2M 9223 being a third party to the said vehicle.

6. This Court has also been following the judgement of the Apex Court and held that the claim for compensation under Section 163 A made by the legal heirs of the deceased who had borrowed the vehicle from the registered owner is not maintainable. Useful reference can be made to the judgement of this Court in ***[National Insurance Co. Limited, Puducherry Vs.Rani and others]*** *reported in* ***2020 (2) CTC 703 (Mad).***

8.In view of the above, it is quite clear that the deceased cannot be treated to be a third party in this case and the insurance company cannot be made liable to pay the compensation to the claimants.

9.In the result, this Court does not find any ground to interfere with the judgment and decree passed by the Tribunal in MCOP No.65 of 2018 dated 06.02.2023 and accordingly the same is confirmed.

10.This Civil Miscellaneous Appeal is dismissed. No costs.

22.07.2024

Index : Yes/No
Speaking Order/Non-Speaking Order
Neutral citation : Yes/No
kp

To

Motor Accident Claims Tribunal/
C.J.M. Court, Cuddalore.

N. ANAND VENKATESH., J

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