IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 11/11/2024

C O R A M

THE HONOURABLE Mr.JUSTICE **M.DHANDAPANI**

Civil Miscellaneous Appeal No.1990 of 2020
a n d
C.M.P.No.14648 of 2020

The Manager,
United India Insurance Company Ltd.,
Motor T.P. Claims,
Having office at No.173C,
MTH Road,
Ambattur, Chennai – 600 053.

Having Branch Office at
J.N. Road,
Tiruvallur Taluk & District,
Tiruvallur – 602 001. ... Appellant

Versus

1. E. Sathish
2. A.E. Rathnagar ... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the award and decree dated 1.8.2019 made in M.C.O.P. No.243 of 2018 on the file of the Motor Accidents Claims Tribunal No.II (Special Sub Court to deal with MCOP Cases), Tiruvallur.

For Appellant	...	Mr. D. Bhaskaran
For Respondents	...	Mr.V. Sithannan for R1 Mr.V. Chithambaram for R2

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JUDGMENT

This Civil Miscellaneous Appeal has been filed challenging the award and decree dated 1/8/2019 passed in M.C.O.P.No.243 of 2018 on the file of the Motor Accidents Claims Tribunal No.II (Special Sub-Court to deal with MCOP Cases), Tiruvallur.

2. The case of the claimant/first respondent is that on 6/7/2017, at about 7.30 p.m., when he was riding his Motorcycle bearing Registration No.TN-18-4837 along with his friend Rajini as a pillion rider proceeding towards Uthukottai Highways, near Sathyavedu vegetable market, on the way to APSRTC bus stand, tried to overtook the lorry of the second respondent bearing Registration No.AP-21-TY-8747. At that time, second respondent's vehicle driver applied sudden break, by which the appellant hit against the lorry and fell down under back tyre of the lorry. As a result, the claimant/first respondent had sustained grievous injuries. It is under these

circumstances, the claimant had filed claim petition in M.C.O.P.No.243 of 2018 on the file of the Special Sub-Court to deal with Motor Accidents Claims Cases (MACT No.II), Tiruvallur, claiming a sum of Rs.26,00,000/- as compensation.

3. The Tribunal on considering the facts and circumstances of the case and on appreciation of oral and documentary evidence, awarded a sum of Rs.1,00,000/- and directed the Insurance Company to pay this compensation with interest at the rate of 7.5% p.a.

4. Being aggrieved, Insurance Company has filed the present appeal before this Court.

5. Heard Mr.D.Bhaskaran, learned counsel for the appellant, Mr.V.Sithannan, learned counsel for the first respondent and Mr.V.Chithambaram, learned counsel for the second respondent.

6. The learned counsel appearing for the appellant Insurance Company submitted that the issue arose involving res integra and the same was decided by the Hon'ble Apex Court in ***RAM KHILADI AND***

ANOTHER Vs. THE UNITED INDIA INSURANCE COMPANY AND ANOTHER 2020 2 SCC – 550, wherein at para Nos.5, from 5.1 to 5.5, the Hon'ble Apex Court held as follows:-

> "5.1 The learned Tribunal held that even in absence of the driver, owner and the insurance company of another vehicle involved in an accident and whose driver was solely negligent, the application under Section 163A of the Act would be maintainable against the owner and the insurance company of the vehicle which was driven by the deceased himself, firstly on the ground that the deceased was in employment of the owner of the vehicle which was driven by him and secondly, in an application under Section 163A of the Act, the negligence is not required to be established and proved and it is enough to establish and prove that the deceased has died in a vehicular accident and while driving a vehicle. The High Court has not agreed with the same and by the

impugned Judgment and Order has held that as the claimants have not filed the claim petition against the owner of another vehicle whose driver was in fact negligent, even as per the claimants and the claim petition should have been filed by the claimants against the owner of another vehicle to seek the compensation, the application under Section 163A of the Act against the insurance company of the vehicle driven by the deceased himself is liable to be dismissed.

5.2 While answering the aforesaid question involved in the present case, first of all, the findings recorded by the learned Tribunal on Issue No. 2 is required to be dealt with and considered. The learned Tribunal framed Issue No. 2 to the effect whether the deceased driver was driving the vehiclemotor cycle bearing registration No. RJ 02 SA 7811 being in employment of the vehicle owneropposite partyBhagwan Sahay in his interest or with his permission/knowledge?

5.3 While answering the finding recorded by the learned Tribunal on Issue No. 2, it appears that, as such, the learned Tribunal has not at all answered the aforesaid issue. While answering Issue No. 2, there is no specific finding whether the deceaseddriver was in employment of the opponentowner Bhagwan Sahay or not. Even otherwise, no evidence is led by the claimants to prove that the deceaseddriver was in employment of the opponentowner Bhagwan Sahay. Despite the above, while answering Issue No. 4 there is some observation made by the learned Tribunal that the deceaseddriver was in employment of the opponentowner Bhagwan Sahay, which is not supported by any evidence on record. Under the circumstances, the deceaseddriver cannot be said to be in employment of the opponentowner Bhagwan Sahay and, therefore, he can be said to be permissible user and/or borrower of motor vehicle owned by the opponentowner Bhagwan Sahay. With these findings, the main question posed for consideration of this Court referred to hereinabove is required to be considered.

5.4 An identical question came to be considered by this Court in the case of Ningamma (supra). In that case, the deceased was driving a motorcycle which was borrowed from its real owner and met with an accident by dashing against a bullock cart i.e. without involving any other vehicle. The claim petition was filed under Section 163A of the Act by the legal representatives of the deceased against the real owner of the motorcycle which was being driven by the deceased. To that, this Court has observed and held that since the deceased has stepped into the shoes of the owner of the vehicle, Section 163A of the Act cannot apply wherein the owner of the vehicle himself is involved. Consequently, it was held that the legal representatives of the deceased could not have claimed the compensation under Section 163A of the Act. Therefore, as such, in the present case, the claimants could have even claimed the compensation and/or filed the claim petition under Section 163A of the Act against the driver, owner and insurance company of the offending vehicle i.e. motorcycle bearing registration No. RJ 29 2M 9223, being a third party with respect to the offending vehicle. However, no claim under Section 163A was filed against the driver, owner and/or insurance company of the motorcycle bearing registration No. RJ 29 2M 9223. It is an admitted position that the claim under Section 163A of the Act was only against the owner and the insurance company of the motorcycle bearing registration No. RJ 02 SA 7811 which was borrowed by the deceased from the opponentowner Bhagwan Sahay. Therefore, applying the law laid down by this Court in the case of Ningamma (supra), and as the deceased has stepped into the shoes of the owner of the vehicle bearing registration No. RJ 02 SA 7811, as rightly held by the High Court, the claim petition under Section 13A of the Act against the owner and insurance company of the vehicle bearing registration No. RJ 02 SA 7811 shall not be maintainable.

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.

7. Such a decision rendered by the Apex Court was followed by this Court in C.M.A.No.3986 of 2019 (THE DIVISIONAL MANAGER, TATA AIG GENERAL INSURANCE COMPANY LIMITED, CHENNAI Vs. 1. S. PRIYA AND 4 OTHERS), dated 17/11/2023, and accordingly, the learned counsel appearing for the appellant prayed for allowing the instant Civil Miscellaneous Appeal.

8. Per contra, the learned counsel appearing for the first respondent submitted that the very same issue was put into challenge before the Madurai Bench of Madras High Court in C.M.A.(MD) No.417 of 2018 (THE UNITED INDIA INSURANCE COMPANY LTD., TIRUCHY Vs. 1. RAMATHILAKAM AND 4 OTHERS), dated 5/1/2024 and the same was confirmed that borrower of the motor cycle is entitled for claiming compensation.

9. However, the learned counsel appearing for the appellant Insurance Company relied upon the decision of this Court in C.M.A.No.936 OF 2024 (UNITED INDIA INSURANCE COMPANY LTD., PERAMBALUR Vs. 1. DEEPA AND 3 OTHERS), wherein it is held that the borrower, who borrowed the vehicle is not entitled for compensation. Accordingly, prayed for dismissal of the appeal

10. This Court has carefully considered the submissions made on either side and the materials available on record.

11. The case in hand clearly falls within the scope of a personal accident coverage. Admittedly, the first respondent was not the registered owner of the vehicle and he borrowed the vehicle from the second respondent. Moreover, the said issue that is involved in the present case is covered by the judgment of the Hon'ble Apex Court in the case of Ramkhiladi (stated supra). In such a view of the matter, award passed by the Tribunal cannot be sustained and accordingly, the same is hereby set aside.

12. In the result, this Civil Miscellaneous Appeal is allowed and the

award passed by the Motor Accidents Claims Tribunal No.II (Special Sub-Court to deal with MCOP cases), Tiruvallur is hereby set aside. If the appellant Insurance Company has deposited any amount, it will be left open to the appellant Insurance Company to withdraw the same with accrued interest, within a period of two weeks from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petition is closed.

11/11/2024

mvs.

Index : Yes / No

Neutral Citation: Yes/No

To

1. The Motor Accidents Claims Tribunal No.II (Special Sub Court to deal with MCOP Cases), Tiruvallur.

M.DHANDAPANI,J

mvs.

C.M.A.No.1990 of 2020

11/11/2024