IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.11.2024

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.No.2496 of 2018
And
C.M.P.No.19061 of 2018

United India Insurance Company Limited
Silingi Building, New No.134, Old No.40-12,
Greams Road, Chennai – 600 006. ... Appellant

Vs.

1.S.Selvi
2.S.Vaitheswari (Minor)
3.S.Naveena (Minor)
4.S.Preethi (Minor)
S.Rogini (Minor) (since died)
5.S.Rosy (Minor)
6.S.Yuvaganesh (Minor)

(Minor respondents 2 to 6 are represented
by their Mother and NF Mrs.S.Selvi)

7.M.Ramayee
8.J.Noor Mohamed ... Respondents

Prayer:

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award and decree dated 19.03.2018 made in M.C.O.P.No.276 of 2012, on the file of the Motor Accidents Claims Tribunal (Special Sub Court No.1), Chennai.

For Appellant : Mr.D.Bhaskaran
For Respondents : M/s.V.Ramya Rao

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 19.03.2018 passed by the Motor Accidents Claims Tribunal (Special Sub Court No.1), Chennai, in M.C.O.P.No.276 of 2012.

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.12 Lakhs alleging that on 25.04.2010 at about 06.30 hours, when the deceased M.Selvam was riding the motorcycle bearing Registration No.TN 22 BF 8836 in Tambaram to Mudichur Road, a cyclist suddenly crossed in North to South direction, and hence the deceased applied sudden brake and the motorcycle fell down, due to which, the deceased sustained fatal injuries. After adjudication, the Tribunal awarded a sum of Rs.8,90,300/- as compensation to the claimants along with interest at 7.5% p.a. from the date of filing of the claim petition i.e.,12.01.2012 till the realization with costs and directed the appellant to deposit the amount.

3.The learned counsel appearing for the appellant further submitted that the deceased himself is a tort feasor, he drove the vehicle in a rash and negligent manner and fell down and sustained fatal injuries. Hence, the claimants are not entitled to file claim petition under Section 166 or 163 A of the Motor Vehicles Act.

4.The learned counsel appearing for the appellant further submitted that the issued involved in the present case is covered by the decision of the Hon'ble Apex Court reported in ***(2020) 2 SCC 550 [Ramkhiladi & Anr. Vs. The United India Insurance Company & Anr.]***, wherein the Hon'ble Apex Court has categorically held that the insurance company shall be liable to pay the compensation to a third party and in the present case, the deceased is not a third party.

5.The learned counsel appearing for the respondents 1 to 7/ claimants submitted that the Tribunal after considering all the factual aspects, awarded compensation 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.Admittedly, on 25.04.2010 at about 06.30 hours, when the deceased M.Selvam was riding the motorcycle bearing Registration No.TN 22 BF 8836 in Tambaram to Mudichur Road, a cyclist suddenly crossed in North to South direction, and hence the deceased applied sudden brake and the motorcycle fell down, due to which, the deceased sustained fatal injuries. The deceased is a tort feasor, he drove the vehicle in a rash and negligent manner and fell down and sustained fatal injuries. Hence, the claimants are not entitled to file claim petition under Section 166 or 163 A of the Motor Vehicles Act.

8.The very same issue was considered by the Hon'ble Apex Court in the decision reported in ***(2020) 2 SCC 550 [Ramkhiladi & Anr. Vs. The United India Insurance Company & Anr.]***, the relevant portion of which, is extracted hereunder:

> *"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 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.*

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 as borrower 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 vehicle i.e. RJ 29 2M 9223 being a third party to the said vehicle."

9.Applying the ratio laid down in the decision reported in ***(2020)***

2 SCC 550 [Ramkhiladi & Anr. Vs. The United India Insurance Company & Anr.], this civil miscellaneous appeal is allowed. The judgment and decree dated 19.03.2018 passed by the Motor Accidents Claims Tribunal (Special Sub Court No.1), Chennai, in M.C.O.P.No.276 of 2012, 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.

21.11.2024

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

To

1.The Motor Accidents Claims Tribunal,
(Special Sub Court No.1), Chennai.

M.DHANDAPANI,J.
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