



C.M.A.(MD)No.735 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated : **29.08.2024**

CORAM :

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

C.M.A(MD)No. 735 of 2021

1.R.Parvathy
2.Vijayakumari
3.Deepa
4.Roopa

... Appellants/Claimants
Vs.

1.Sivasamy
2.The Branch Manager,
National Insurance Company Ltd
College Road,Karaikudi,
Sivagangai District.

...Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 26.03.2021 passed in M.C.O.P.No.23 of 2017 on the file of the Motor Accident Claims Tribunal Judge (Sub Court), Devakottai.

For Appellants	: Mr.J.Anandakumar
For R1	: Mr.R.Sathishkumar
For R2	: Mr.V.Sakthivel

JUDGMENT

The claimants have preferred the instant appeal challenging the dismissal of their claim petition.

2. The claimants stated that while the deceased was riding his two-wheeler bearing Reg.No. TN-63-AL-7852, another two-wheeler bearing



C.M.A.(MD)No.735 of 2021

Reg.No. TN-10-AS-6339 came in a rash and negligent manner and caused collision, which resulted in the death of the deceased Maruthupandiyan.

3. The respondent opposed the claim petition stating that though the rider of the vehicle bearing Reg.No. TN-10-AS-6339 was the tortfeasor, the claimants had not impleaded the owner of the said vehicle and its insurer; and that the claim under Section 163(A) of the Motor Vehicles Act against the 2nd respondent is not maintainable since the deceased stepped into the shoes of the owner.

4. The Tribunal, after considering the oral and documentary evidence on record, held that the claim under Section 163(A) of the Motor Vehicles Act was not maintainable and further the deceased had ridden the vehicle without any valid license.

5. The learned counsel for the appellants submitted that the finding of the Tribunal has to be set aside and compensation has to be awarded to the claimants.



C.M.A.(MD)No.735 of 2021

6. The learned counsel for the 2nd respondent submitted that the issue raised by the appellant is no longer *res integra* and the Hon'ble Supreme Court of India in **Ramkhiladi and another Vs. United India Insurance Company and another** reported in **2020(2) SCC 550** reiterated that the claim under Section 163(A) of the Motor Vehicles Act is not maintainable.

7. The point for consideration in the instant appeal is whether the Tribunal was right in dismissing the claim petition filed by the appellants.

8. Heard both sides and perused the records.

9. In the instant case, as stated earlier, the claim is not against the tortfeasor or its insurer. The claim is filed against the owner and the insurer of the borrowed vehicle, who are not liable to pay compensation. In the judgment cited supra, the Hon'ble Supreme Court of India has held as follows:

“9.4. An identical question came to be considered by this Court in Ningamma. 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 163-A 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 163-A 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 163-A 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 163-A 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 163-A 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 163-A 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 opponent-owner Bhagwan Sahay. Therefore, applying the law laid down by this Court in Ningammas, and as the deceased has stepped into the shoes



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C.M.A.(MD)No.735 of 2021

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 163-A of the Act against the owner and insurance company of the vehicle bearing Registration No. RJ 02 SA 7811 shall not be maintainable."

10. Since the deceased stepped into the shoes of the owner of the vehicle, the Tribunal rejected the award of compensation under Section 163(A) of the Motor Vehicles Act. The Hon'ble Division Bench of this Court in C.M.A.No.1395 of 2021, vide order dated 19.08.2024 on a reference, held that the claim under Section 163(A) of the Motor Vehicles Act was not maintainable under such circumstances. In such view of the matter, this Court is of the view that the appeal is liable to be dismissed. However, if the claimants are entitled to the personal accident coverage, it is open to them to approach the consumer forum in accordance with law.

11. In fine, this appeal is dismissed. No costs.

28.08.2024

Index : Yes / No
Neutral Citation : Yes / No
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C.M.A.(MD)No.735 of 2021

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To

1. Motor Accident Claims Tribunal Judge (Sub Court), Devakottai.
2. The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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C.M.A.(MD)No.735 of 2021

SUNDER MOHAN, J.

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Judgment made in
C.M.A(MD)No. 735 of 2021

28.08.2024