BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 09.02.2024

Pronounced on : 30.04.2024

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

C.M.A.(MD)No.534 of 2020

United India Insurance Company Limited,
represented by its Divisional Manager,
10/12, 1st Floor, CSC BSNL Building,
Urkad Road, Ambasamudram. ...Appellant

Vs.

1. Chellammal

2. Marimuthu

3. Muthukannan ...Respondents

Prayer : This Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, to set aside the judgment and decree dated 13.07.2020 passed in M.C.O.P.No.276 of 2014 on the file of the Additional Motor Accidents Claims Tribunal cum Additional Sub Court, Tenkasi.

For Appellant	: Mr.C.Karthik
For R1 & R2	: Mr.J.C.Rathinavel Pandian
For R3	: No appearance

JUDGMENT

The Civil Miscellaneous Appeal is directed against the award passed in M.C.O.P.No.276 of 2014 dated 13.07.2020 on the file of the Motor Accident Claims Tribunal/Additional Subordinate Court, Tenkasi.

2. The appellant/insurer, who was made liable to pay compensation of Rs.1,00,000/- (Rupees One Lakh only) with interest and costs to the respondents 1 and 2/claimants for the death of Muthukumar, consequent to an accident occurred on 02.10.2013, challenged the liability mulcted on it by invoking personal accident coverage.

3. For the sake of convenience and brevity, the parties herein after will be referred to as per their status/ranking in the Tribunal.

4. The case of the claimants is that on 02.10.2013, when the deceased Muthukumar was proceeding in a two wheeler bearing Registration No.TN-76-P-4210 from west to east on Kasimajorpuram to Nannagaram road slowly and carefully near Tamil Nadu Hotel, at about 03.00 p.m. a cow suddenly intervened and the two wheeler rider, in order

to avoid dashing against the cow, had applied sudden brake, but lost his control and fell down, that the two wheeler rider had sustained serious head injury and that the injured was immediately taken to Tenkasi Government Headquarters Hospital and after first aid treatment, was taken to Tirunelveli Medical College Hospital and despite treatment, he succumbed to the injuries on 08.10.2013.

5. The defence of the second respondent/insurer is that as per the FIR, the deceased Muthukumar drove the motorcycle in a rash and negligent manner in a curve road and applied sudden brake fully knowing that such place is a curve road, that the accident was occurred only due to the own negligence of the deceased Muthukumar, that the deceased was the tortfeasor of the accident, that the deceased was not having valid and effective driving license to drive any type of motor vehicles at the time of accident, that the first respondent, by allowing the deceased to drive the two wheeler without driving license, has violated the terms and conditions of the insurance policy and the rules of Motor Vehicles Act and that therefore, the second respondent/insurer is not liable for the claim.

6. During trial, the claimants have examined the second claimant Marimuthu as P.W.1 and exhibited 4 documents as Ex.P.1 to Ex.P.4. The first respondent had remained *ex parte*. The second respondent/insurer has examined two witnesses as R.W.1 and R.W.2 and exhibited 4 documents as Ex.R.1 to Ex.R.4 and one witness document as Ex.X.1.

7. The learned trial Judge, upon considering the evidence both oral and documentary and on hearing the arguments of both the sides, has passed the impugned award dated 13.07.2020 holding that the deceased-two wheeler rider was responsible for the accident and in view of the personal accident coverage and also the fact that the deceased has stepped into the shoes of the owner, has directed the second respondent/insurer to pay Rs.1,00,000/- with interest and costs. Aggrieved by the said award, the second respondent/insurer has preferred the present appeal.

8. Admittedly, FIR came to be registered in Crime No.395 of 2013 on the file of Courtallam Police Station for the offences under Sections 279, 337 and 304(A) IPC against the deceased and after completing the investigation, the jurisdictional police has laid the final report as 'action

dropped', by holding that the accident was occurred only due to the rash and negligent driving of the deceased Muthukumar. As rightly contended by the learned counsel appearing for the second respondent/insurer, no other vehicle was involved in the accident and even according to the claimants, when the deceased Muthukumar was proceeding in a two wheeler, a cow suddenly intervened and in order to avoid dashing against the cow, he had applied sudden brake, but lost his control and fell down. P.W.1-brother of the deceased would reiterate the contentions raised in the claim petition. Considering the mode of accident and also the evidence available on record, the Tribunal has rightly come to a decision that the accident was occurred only due to the rash and negligent driving of the deceased-two wheeler rider.

9. It is not in dispute that the two wheeler bearing Registration No.TN-76-P-4210 was owned by the first respondent and the same was insured with the second respondent/insurer and that the deceased Muthukumar borrowed the vehicle from the first respondent and proceeded in Kasimajorpuram – Nannagaram road, Tenkasi, where the accident had occurred. Hence, it can be easily inferred that the deceased

stepped into the shoes of the actual owner of the vehicle i.e., first respondent.

10. The learned trial Judge, by relying on the judgment of the Hon'ble Division Bench of this Court in the case of ***Divisional Manager, United India Insurance Com. Ltd., Neyveli Vs. R.Rekha and others*** reported in ***2017 (2) TNMAC 674*** and the judgment of the Hon'ble Supreme Court in the case of ***Ramkhiladi and another Vs. United India Insurance Co. Ltd. and another*** reported in ***2020 (1) CTC 443***, by observing that the deceased stepped into the shoes of the owner of the vehicle and that since the insured has paid Rs.50/- towards compulsory PA cover for owner cum driver and liability is limited to Rs.1,00,000/-, has held that the claimants are entitled to get Rs.1,00,000/-.

11. At this juncture, it is necessary to refer the following judgments;

(i) 2009 (2) TN MAC 169 (SC)
(Ningamma and another Vs. United India Insurance Company Limited)

"13. In the light of the aforesaid submissions, the question that falls for our consideration is whether the legal

representatives of a person, who was driving a motor vehicle, after borrowing it from the real owner meets with an accident without involving any other vehicle, would be entitled to Compensation under Section 163A of MV A or under any other provision(s) of law and also whether the Insurer who issued the Insurance Policy would be bound to indemnify the deceased or his legal representative?..........

18. In the case of Oriental Insurance Company Ltd. v. Rajni Devi and Others, (2008) 5 SCC 736, wherein one of us, namely, Hon'ble Justice S.B. Sinha is a party, it has been categorically held that in a case where third party is involved, the liability of the insurance company would be unlimited. It was also held in the said decision that where, however, compensation is claimed for the death of the owner or another passenger of the vehicle, the contract of insurance being governed by the contract qua contract, the claim of the claimant against the insurance company would depend upon the terms thereof. It was held in the said decision that Section 163-A of the MVA cannot be said to have any application in respect of an accident wherein the owner of the motor vehicle himself is involved. The decision further held that the question is no longer res integra. The liability under section 163-A of the MVA is on the owner of the vehicle. So a person cannot be both, a claimant as also a recipient, with respect to claim. Therefore, the heirs of the *deceased could not have maintained a claim in terms of Section 163-A of the MVA. In our considered opinion, the ratio of the aforesaid decision is clearly applicable to the facts of the present case. In the present case, the deceased was not the owner of the motorbike in question. He borrowed the said motorbike from its real owner. The deceased cannot be held to be employee of the owner of the motorbike although he was authorised to drive the said vehicle by its owner, and therefore, he would step into the shoes of the owner of the motorbike.*

20. When we apply the said principle into the facts of the present case we are of the view that the claimants were not entitled to claim compensation under Section 163-A of the MVA and to that extent the High Court was justified in coming to the conclusion that the said provision is not applicable to the facts and circumstances of the present case. However, the question remains as to whether an application for demand of compensation could have been made by the legal representatives of the deceased as provided in Section 166 of the MVA. The said provision specifically provides that an application for compensation arising out of an accident of the nature specified in sub-section (1) of section 165 may be made by the person who has sustained the injury; or by the owner of the property; or where death has resulted from the accident, by all or any of the legal representatives of the *deceased; or by any agent duly authorised by the person injured or all or any of the legal representatives of the deceased, as the case may be. When an application of the aforesaid nature claiming compensation under the provisions of Section 166 is received, the Tribunal is required to hold an enquiry into the claim and then proceed to make an award which, however, would be subject to the provisions of Section 162, by determining the amount of compensation, which is found to be just. Person or persons who made claim for compensation would thereafter be paid such amount. When such a claim is made by the legal representatives of the deceased, it has to be proved that the deceased was not himself responsible for the accident by his rash and negligent driving. It would also be necessary to prove that the deceased would be covered under the policy so as to make the insurance company liable to make the payment to the heirs.”*

(ii) CMA.No. 4858 of 2019 dated, 09.10.2020
[Joyesmarry and another Vs. Velumani and others]

“*13. Once it has been decided that the accident had taken place due to the negligence of the deceased, the question which arises for consideration is whether in such circumstances, the second respondent insurance company is liable to pay compensation to the claimants. The liability of the insurance* *company is to the extent of indemnification of the insured against the injured person, a third party or in respect of damages to property. The insurer is not liable to indemnify the insured if the accident had taken place where the insured himself was driving the vehicle and due to his negligence accident had taken place. The Hon'ble Supreme Court in Oriental Insruance Company Ltd., Vs. Jhuma Saha (Smt) and Ors reported in (2007) 9 SCC 263 has held as follows:*

> *"10. The deceased was the owner of the vehicle. For the reasons stated in the claim petition or otherwise, he himself was to be blamed for the accident. The accident did not involve motor vehicle other than the one which he was driving, the question which arises for consideration is that the deceased himself being negligent, the claim petition under Section 166 of the Motor Vehicles Act, 1988, would be maintainable.*
>
> *11. Liability of the insurer – Company is to the extent of indemnification of the insured against the respondent or a injured person, a third person or in respect of the damages of property. Thus, if the insured cannot be fastened with liability under the provisions of Motor Vehicles Act, the question of the insurer being liable to indemnify insured, therefore, does not arise."*

14. The above judgment has also been followed by the Hon'ble Supreme Court in the decision in National Insurance Co. Ltd., vs. Ashalata in Bhowmik and Ors reported in 2018(9) SCC 801, wherein at paragraph No.8 it has been held as follows:

> *8. This Court in Oriental Insurance Co. ltd., Vs. Jhuma Saha (Smt) and Ors (2007) 9 SCC, 263 was considering a similar case where the owner himself was driving the vehicle which due to his negligence dashed with a tree on the roadside as a result of which he died. The Court held that the claim petition filed by his LRs was not maintainable.*

15. In the instant case, it is the owner of the vehicle who met with the accident due to his own negligence and therefore, the insurance company is not liable to pay any compensation to the claimants."

(iii) 2020(2) TNMAC 753

(Manager, New India Assurance Company Ltd., Vs. Vinayagamoorthy and another)

"Motor Vehicles Act. 1988 (59 of 1988), Sections 166, 165, 163-A and 140 – Maintainability of Claim Petition under Section 166, when claimant is tortfeasor – Claimant / R1 driving

Car belonging to R2/ owner with his wife and two minor children as occupants in Car – claimant drove Car, against flood water on bridge in a rainy day – Car swept away with its occupants in flood and wife and two children died – Claim petition filed by Claimant / R1 under Section 166 as a Legal Heir – Claimant, being a tortfeasor himself, cannot claim compensation for his own fault – Nor owner / R2 and Insurer can be held vicariously liable to pay compensation erred in allowing Claim Petition and awarding compensation – Claim under Section 163-A also not maintainable – Tribunal ought to have restricted Compensation under Section 140 – Claimant entitled to Rs.1,50,000/- (Rs.50,000/- x 3) as compensation under Section 140 – Appellant / Insurer directed to deposit Rs. 1,50,000/- with interest at 7.5% p.a within period of 6 weeks."

12. As already pointed out, the deceased Muthukumar is the tortfeasor. Applying the legal dictum above referred, this Court has no hesitation to hold that the claim petition filed under Section 166 of the Motor Vehicles Act or even if it is filed under Section 163A of the Motor Vehicles Act is not legally maintainable.

13. No doubt, the Tribunal, taking note of the premium paid towards personal accident coverage for owner cum driver, has given a finding that

the claimants are entitled to get Rs.1,00,000/-. But the main contention of the second respondent/insurer is that the deceased Muthukumar was not having valid driving license at the time of accident. In an attempt to prove the same, the second respondent/insurer has summoned and examined Junior Assistant attached to the Tenkasi Regional Transport Office as R.W.1 and he would say that their office is not having any records to show that the driving license was given to the deceased. It is pertinent to note that the second respondent/insurer has sent a legal notice to the first claimant and the first respondent to produce the driving license of the deceased and that though the first claimant and the first respondent have received the legal notice, they have not chosen to send any reply. Moreover, no one has produced driving license of the deceased before the Motor Vehicle Inspector at the time of inspection. Considering the evidence available on record, the Tribunal has rightly observed that the deceased was not possessing valid driving license at the time of accident.

14. Generally, as per the contract of insurance, in case of personal accident, the owner-cum-driver is entitled to the amount agreed under the contract. But in the present case, as already pointed out, admittedly, the

deceased Muthukumar was not possessing valid driving licence at the time of accident. Since the deceased Muthukumar had driven the vehicle without valid driving licence and personal accident cover is covered by the terms of contract, the claimants are not entitled to invoke personal accident coverage and as such, in view of the violation of the policy condition, the second respondent/insurer is not liable to pay the agreed amount under the contract of insurance policy.

15. Considering the above, this Court has no other option, but to hold that the claimants are not entitled to claim any compensation, but the Tribunal, without considering the legal position in proper perspective, has awarded compensation of Rs.1,00,000/- to the claimants and as such, the same is liable to be interfered with. Hence, this Court concludes that the impugned award dated 13.07.2020 is liable to be set aside.

16. Considering the other facts and circumstances of the case, this Court further decides that the parties are to be directed to bear their own costs.

17. In the result, this Civil Miscellaneous Appeal is allowed and the impugned award dated 13.07.2020 passed in M.C.O.P.No.276 of 2014 on the file of the Additional Subordinate Court, Tenkasi. is set aside and the claim petition stands dismissed. The appellant/insurer is permitted to withdraw the amount, if any deposited. The parties are directed to bear their own costs.

30.04.2024

NCC :yes/No
Index :yes/No
Internet:yes/No
csm

To

1. The Motor Accident Claims Tribunal/
Additional Subordinate Court, Tenkasi.

2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

K.MURALI SHANKAR,J.

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Pre-Delivery Judgment made in
C.M.A.(MD)No.534 of 2020

Dated : 30.04.2024