BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 27.11.2023

PRONOUNCED ON : 12.01.2024

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

C.M.A.(MD)No.307 of 2018

and

C.M.P.(MD)No.4206 of 2018

M/s.United India Insurance Company Limited,
through its Branch Manager,
Ambasamuthiram. ... Appellant / Respondent

Vs.

1.S.Beema Beevi

2.S.Babasaleem Malik

3.S.Hajmeera Begum ... Respondents / Petitioners

PRAYER: Civil Miscellaneous Appeal filed under Order 173 of Motor Vehicles Act, 1988, to set aside the Judgment and decree dated 23.10.2017 passed in M.C.O.P.No.362 of 2012 on the file of the Motor Accident Claims Tribunal Cum Additional Sub Court, Tenkasi.

For Appellant : Mr.C.Jawahar Ravindran

For Respondents : Mr.N.Shankar Ganesh

JUDGMENT

This Civil Miscellaneous Appeal has been directed against the Judgment and decree dated 23.10.2017 passed in M.C.O.P.No.362 of 2012 on the file of the Motor Accident Claims Tribunal Cum Additional Sub Court, Tenkasi, by the appellant / Insurance Company / respondent challenging the liability of the award.

2. For the sake of convenience, the parties are referred herein as per their rank before the Trial Court.

3. The brief facts in a nutshell are as follows:

(i) This is a fatal case. On 18.08.2012 at about 1.00 P.M., the deceased Sahul Hameed was riding from Senkottai to Tenkasi in TVS Scooty bearing registration No. T.N.76-M.5438 from west to east direction.

While so, unexpectedly a cow jumped into the road, the deceased Sahul Hameed in order to prevent a collusion as against the cow applied sudden break. As a result of which, the said TVS Scooty got skid in the road and the deceased fell down from the bike. As a result of which, the deceased sustained fatal injuries on the back side of his head and all over the body. Immediately, he was taken to the Government Hospital, Tenkasi for first aid and then taken to the Medical College Hospital, Tirunelveli for further treatment. Though the best and necessary treatment given to the Sahul Hameed, he died on 22.08.2012.

(ii) Hence, the legal heirs of the deceased have filed M.C.O.P.No. 362 of 2012, seeking a compensation of Rs.25,00,000/- (Rupees Twenty Five Lakhs only) for the loss of life of the deceased Sahul Hameed. The 1st petitioner is the wife of the deceased. The 2nd and 3rd petitioners are the daughters of the deceased. The respondent had filed a counter refuting the allegations put forth in the claim petition.

(iii)Three issues were framed by the learned Tribunal. Following which one witness was examined, i.e., the 1st claimant / wife of the deceased was examined as PW-1, and Ex.P-1 to Ex.P-4 were marked on the side of the petitioners in which Ex.P-1 is the Copy of FIR report, Ex.P-2 is the postmortem report, Ex.P-3 is the copy of Insurance Policy, Ex.P-4 is the vehicle inspection report. One witness was examined, i.e., Office Assistant of the respondent Insurance Company was examined as R.W-1 and Ex.R-1 was marked on the side of the respondent in which Ex.R-1 is the Insurane certificate.

(iii) On the basis of the oral and documentary evidence and the arguments submitted by the respective parties before the Tribunal, the learned Tribunal had proceeded to conclude that the accident happened only because of the sudden intervention of the cow. The deceased attempted to prevent the collusion of the two wheeler as against the cow which had suddenly jumped into the road and not due to the collusion with another vehicle. It is needless to mention that the vechicle of the deceased was insured with the respondent Insurance Company. It was also certified by the learned Tribunal that the Insurance P.A coverage was owner cum driver package in which additional premium of Rs.50/- (Rupees Fifty only) was also paid by the deceased to cover the owner cum driver insurance coverage. Hence, the learned Tribunal proceeded to conclude that the claimants are entitled to get the compensation for the deceased under Section 163 (A) of Motor Vehicles Act, 1988.

(iv) Since it was stated that in the claim petition, the deceased earned Rs.3,250/- (Rupees Three Thousand Two Hundred and Fifty only) per month. Since the deceased was 60 years old, the relevant multiplier 8 was adopted. After deducting 1/3rd for his personal expenses, he would spend Rs.2167/- (Rupees Two Thousand One Hundred and Sixty Seven only) for the welfare of his family. Accordingly, the loss of income would arrive at Rs.2,08,032/- (Rupees Two Lakhs Eight Thousand and Thirty Two only). Hence, the Tribunal had concluded that petitioners were entitled to get Rs.2,17,532/- (Rupees Two Lakhs Seventeen Thousand Five Hundred and Thirty Two only) as compensation. The details of the compensation awarded by the learned Tribunal are as follows:

S.No.	Description	Amount
1.	Loss of income	Rs. 2,08032/- (Rs.2167*12*8)
2.	Funeral Expenses	Rs. 2,000/-
3.	Loss of consortium	Rs. 5,000/-
4.	Loss of estate	Rs. 2,500/-
	Total	Rs. 2,17,532/-

Challenging the same, the present Civil Miscellaneous Appeal has been filed by the appellant Insurance Company / Respondent.

4. It was categorically argued by the learned Counsel appearing for the appellant / respondent that the deceased was the owner of the vehicle not at all a third party. Hence, the claim made by the legal heirs of the owner is not at all maintainable. He was relying upon the judgment of the Hon'ble Apex Court passed in ***Ramkhiladi .Vs. United Insurance Company – 2020 (1) TNMAC Page 1 (SC).*** The relevant portion of the judgment are extracted hereunder:

"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 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 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 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.

5.6. In view of the above and for the reasons stated above, in the present case, as the claim under Section 163-A 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 163-A 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.

5.9. Now, so far as the submission made on behalf of the Claimants that in a claim under Section 163-A of the Act mere use of the Vehicle is enough and despite the Compensation claimed by the heirs of the Owner of the Motorcycle, which was involved in the accident resulting in his death, the claim under Section 163-A of the act would be maintainable is concerned, in view of the decision of this Court in ***Rajni Devi*** *(supra), the aforesaid cannot be accepted. In* ***Rajni Devi*** *(supra), it has been specifically observed and held that the provisions of Section 163-A of the Act cannot be said to have any application with regard to an accident wherein the Owner of the Motor Vehicle himself is involved. After* *considering the decisions of this Court in the cases of **Oriental Insurance Co.Ltd. v. Jhuma Saha,** 2007 (2) TN MAC 56 (SC) : 2007 (9) SCC 263; **Dhanraj** (supra); **National Insurance Co. Ltd. v. Laxmi Narain Dhut,** 2007 (1) TN MAC 301 (SC): 2007 (3) SCC 700; and **Premkumari v. Prahlad Dev**, 2008 (1) TN MAC 115 (SC) : 2008 (3) SCC 193, it is ultimately concluded by this Court that the liability under Section 163-A of the Act is on the Owner of the Vehicle as a person cannot be both, a Claimant as also a recipient and, therefore, the heirs of the Owner could not have maintained the claim in terms of Section 163-A of the Act. It is further observed that, for the said purpose, only the terms of the Contract of Insurance could be taken recourse to. In the recent decision of this Court in the case of **Ashalata Bhowmik** (supra), it is specifically held by this Court that the parties shall be governed by the terms and conditions of the Contract of Insurance. Therefore, as per the Contract of Insurance, the Insurance Company shall be liable to pay the Compensation to a Third party and not to the Owner, except to the extent of Rs.1,00,000/- as observed hereinabove.*

6. In view of the above and for the reasons stated above, the present Appeal is partly allowed to the aforesaid extent and it is observed and held that the Original Claimants shall be entitled to a sum of Rs.1,00,000/- only with interest @ 7.5 per cent per annum from the date of the Claim Petition till realization. In the facts and circumstance of the present case, there shall be no order as to Costs."

5. The learned Counsel appearing for the appellant / respondent further submitted that the deceased is entitled to claim only personal accident cover, since the owner of the vehicle is involved in the accident. It is also further contended that the claimants are entitled to get fifteen lakhs under the personal accident cover on the basis of the contract of the new policy. Hence, the award has to be set aside and the same should be modified in terms of ***Ramkhiladi .Vs. United Insurance Company*** case.

6. The learned counsel for the respondents / claimant has submitted that the Tribunal had considered all the materials and evidence available on record and awarded the compensation which is just, fair and reasonable. Hence the order passed by the Tribunal is in accordance with law and the same has to be confirmed.

7. Heard the learned counsel for the appellant and the learned Counsel appearing for the respondents and perused the materials available on record. On the side of the claimants, one witness was examined and Ex.P-1 to Ex.P-4 were marked and one witness was examined and Ex.R.W-1 was marked on the side of the respondent.

8. Following the Judgment of the Hon'ble Apex Court passed in ***Ramkhiladi .Vs. United Insurance Company***, I have no other option than to conclude that the appeal under Section 163-A of the Act has been preferred by the owner of the vehicle and a person cannot be both, a claimant and also a recipient. Therefore, the legal heirs could not have maintained the claim in terms of Section 163-A of the Act. In view of the same, only the terms of the contract of the insurance could be taken recourse to and the parties shall be governed by the terms and conditions of the contract of Insurance. Therefore, as per the contract of Insurance, the Insurance Company shall be liable to pay the compensation to a third party and not to the owner, except to the extent of Rs.1,00,000/- (Rupees One Lakh only). In the instant case the deceased met with an accident while riding his own TVS scooty in the capacity of owner of vehicle. Hence, he cannot be claimant and the recipient at the same time. In view of the same, the legal heirs of the deceased are entitled to get an amount of Rs.1,00,000/- (Rupees One Lakh only) with 7.5 % interest from the date of the petition to till the date of realization.

9. Accordingly, this Civil Miscellaneous Appeal is allowed. There shall be no order as to costs. Consequently, connected Civil Miscellaneous Petition is closed. The claimants are entitled to get compensation, as per the apportionment made by the Tribunal.

10. The appellant / Insurance Company is directed to deposit the compensation amount with 7.5% interest and costs to the credit of M.C.O.P.No.362 of 2012 on the file of the Motor Accident Claims Tribunal cum Additional Sub Court, Tenkasi, within a period of eight weeks (8) from the date of receipt of copy of this judgment, less the amount, if any already deposited. On such deposit, the claimants are permitted to withdraw the said amount, less the amount, if any already withdrawn, by making necessary application before the Tribunal.

12.01.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes
Sml

To

The Motor Accident Claims Tribunal
cum Additional Sub Court,
Tenkasi.

<u>Copy to</u>

The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.

L.VICTORIA GOWRI, J.,

Sml

C.M.A.(MD)No.307 of 2018

12.01.2024