



C.M.A.(MD)No.521 of 2018

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 27.11.2023

PRONOUNCED ON : 11.01.2024

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

C.M.A.(MD)No.521 of 2018

and

C.M.P.(MD)No.6095 of 2018

The Oriental Insurance Company Ltd.,
Lakshmi Complex V Floor,
No.73/B-1, Salai Road,
Thillainagar East,
Trichy-18.

... Appellant / 2nd Respondent

Vs.

1.G.Saroja

...1st Respondent / 1st petitioner

R.Ganapathy (Died)

2.M.Sakthivel

...2nd Respondent / 1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Order 173 of Motor Vehicles Act, 1988, against the decree and judgment dated 05.02.2018



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passed in M.C.O.P.No.54 of 2013 on the file of the Motor Accidents Claims Tribunal cum Sub Judge, Kuzhithalai.

For Appellant : Mr.C.Jawahar Ravindran

For R-1 : Mr.P.Kottaichamy

For Mr.K.Govindarajan

JUDGMENT

This Civil Miscellaneous Appeal has been directed against the decree and judgment dated 05.02.2018 passed in M.C.O.P.No.54 of 2013 on the file of the Motor Accidents Claims Tribunal cum Sub Judge, Kuzhithalai, by the appellant / Insurance Company / respondent challenging the liability as well as the quantum 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:



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(i) This is a fatal case. On 17.11.2012, the deceased Jagadeesh was riding motorcycle bearing Engine No: 0E4AC2023284 and the Chasis No: MD634KE41C2A34610 from west to east in Karur to Trichy East-West NH67 main road. While the deceased reached near Sithalavai bus stop at about 11 P.M., dashed against one Hemanthkumar who was coming in the opposite direction and fell down from the motorcycle and sustained grievous multiple injuries on head and all over the body. Immediately after the accident, he was admitted at G.C.Hospital, Karur for first aid and he was taken to Kovai Medical Centre and Hospital Ltd., Coimbatore for further treatment where he died on 19.11.2012.

(ii) Hence, the legal heirs of the deceased have filed M.C.O.P.No.54 of 2013 before the Motor Accidents Claims Tribunal cum Sub Judge, Kuzhithalai for the loss of life of deceased Jagadeesh. The petitioners are the parents of the deceased. The 1st respondent is the owner of the vehicle. The 2nd respondent is the Insurance Company in which the said vehicle was insured.

(iii) The 2nd respondent had filed a counter refuting the allegations



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put forth in the claim petition. The 2nd respondent pleaded in the counter that the rider deceased Jagadeesh without possessing valid and effective driving licence on the date of the accident had lost his control over the bike and has fallen from the bike. As a result of which, he succumbed to grievous injuries and later he died after two days. That apart, the 2nd respondent further pleaded that the deceased Jagadeesh drove the unregistered bike on the date of the accident and it amounts to violation of the principles of Motor Vehicles Act, 1988 and also denied the insurance policy of the alleged TVS Apache bike.

(iv) Four issues were framed by the learned Tribunal. Following which one witness was examined and Ex.P-1 to Ex.P-12 were marked on the side of the petitioners. One witness was examined and Ex.R.W-1 was marked on the side of the respondents.

(v) 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 it was only the deceased Jagadeesh who was responsible for his death and the same was decided on



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the basis of the FIR which is marked as Ex.P-1. The father of the deceased i.e., one of the claimant died during the pendency of the Motor Accident original claim petition before the Tribunal. On the basis of the legal heir certificate which is marked as Ex.P-9, it reveals that the 1st petitioner is the mother of the deceased and she depended on the income of the deceased. Despite the deceased was being the tortfeasor of his death, the claim petition was filed under Section 163A & 165 on the basis of no fault theory, the learned Tribunal proceeded to conclude that the 1st petitioner was entitled to get the compensation for the loss of life of his son deceased Jagadeesh. In furtherance to the same, the learned Tribunal observed that the 1st respondent owner had remained exparte before the Tribunal and he had allowed the deceased Jagadeesh to drive an unregistered two wheeler in violation of the principles of natural justice under Section 39 of Motor Vehicles Act, 1988. That apart, the same is punishable offence under Section 192 of the Motor Vehicles Act, 1988 and as far as the 1st respondent was concerned, the deceased Jagadeesh was a third party. Hence, the learned Tribunal proceeded to conclude that the 1st respondent is liable to pay the compensation to the surviving claimant. The learned Tribunal proceeded to conclude that the 2nd respondent is liable to pay compensation on the basis of the pay and recover.



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(vi) On the basis of the fact that the deceased Jagadeesh was 21 years old at the time of the accident, the learned Tribunal had fixed the monthly income of the deceased at Rs.3,250/- (Rupees Three Thousand Two Hundred and Fifty only) and future prospects at Rs.1300/- (Rupees One Thousand Three Hundred only) (40% of monthly income). Hence, the notional income would arrive at Rs.4,550/- (Rupees Four Thousand Five Hundred and Fifty only). After deducting 1/3rd for his personal expenses, the notional income would arrive at Rs. 3,034/- (Rupees Three Thousand and Thiry Four only). According to Sarla Verma multiplier method, the loss of income would arrive at $\text{Rs.}3,034 * 12 * 18 = \text{Rs.}6,55,344/-$ (Rupees Six Lakhs Fifty Five Thousand Three Hundred and Forty Four only). Hence, the Tribunal had concluded that the surviving claimant was entitled to get Rs.8,30,470/- (Eight Lakhs Thiry Thousand Four Hundred and Seventy only) as compensation. The details of the compensation awarded by the learned Tribunal are as follows:



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S.No.	Description	Amount
1.	Loss of income	Rs. 6,55,344/- (Rs.3034*12*18)
2.	Loss of love and affection for the 1 st petitioner	Rs. 25,000/-
3.	Medical Expenses	Rs. 1,35,126/-
4.	Funeral Expenses	Rs. 15,000/-
	Total	Rs. 8,30,470/-

Challenging the same, the present Civil Miscellaneous Appeal has been filed by the appellant Insurance Company / 2nd respondent.

4. It was categorically argued by the learned Counsel appearing for the appellant / 2nd respondent that the vehicle involved in the accident was an unregistered motorcycle. After the accident the rider of the accident was taken to G.C.Hospital, Karur for first aid and he was taken to Kovai Medical Centre and Hospital Ltd., Coimbatore for further treatment where he died in the course of the treatment. On the basis of the FIR, the deceased was the tortfeasor of his death. The 1st respondent owner has sold his bike to the deceased Jagadeesh, however, the deceased Jagadeesh failed



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to register the same in his name after purchasing the same. It is further contended that any application under Section 163 (A) of the Motor Vehicles Act, 1988 could be made only for the benefit of third party. In the case in hand, the deceased was not the owner of the vehicle. On the basis of the pleadings, the deceased was driving the motor vehicle belonging to the 1st respondent. On that basis, the learned Tribunal proceeded to conclude that the deceased Jagadeesh who had driven the said Motorcycle as third party as far as the 1st respondent is concerned. Hence, the Tribunal is wrong in fixing the liability and negligence. Therefore, the Insurance Company is not liable to pay any compensation to the claimant. It is further contended that the compensation awarded by the Tribunal is excessive, exorbitant and without any basis and justification. Hence, the order passed by the Tribunal is not in accordance with law and the same should be set aside and pressed for allowing this Civil Miscellaneous Appeal.

5. The learned counsel for the 1st respondent / 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.



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6. Heard the learned counsel for the appellant and the learned Counsel appearing for the respondents and perused the materials available on record. One witness was examined and Ex.P-1 to Ex.P-12 were marked on the side of the petitioners. One witness was examined and Ex.R.W-1 was marked on the side of the respondents.

7. A careful perusal of the materials available on record would reveal that the deceased Jagadeesh had clearly purchased the TVS Apache motorcycle from the 1st respondent and had driven the said vehicle without registering the same in his name. It is also pertinent to mention here that the FIR in crime No.375 of 2012 was also registered in the name of the deceased. Hence, the 2nd respondent Insurance Company is not entitled to indemnify the 1st respondent. It is also considered by this Court that the learned Tribunal ought not to have concluded that the deceased was a third party as far as the owner is concerned. No doubt, the vehicle has been purchased by the deceased from the 1st respondent and the deceased had continued to use the said bike without registering the same in his name. A similar case was dealt with by the Hon'ble Supreme Court in



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Ningamma .Vs. United Insurance Company Ltd., reported in 2009 (13)

SCC page 710 (SC) and the relevant portion of the same is extracted as follows:

“14. Section 163-A of the MVA was inserted by Act 54 of 1994 by way of a social security scheme. It is needless to say that the said provision is a code by itself. The said provision has been inserted to provide for a new predetermined structured formula for payment of compensation to road accident victims on the basis of age/income of the deceased or the person suffering permanent disablement. In view of the language used in said section there could be no manner of doubt that the said provision has an overriding effect as it contains a non obstante clause in terms whereof the owner of the motor vehicle or the authorised insurer is liable to pay compensation in the case of death or permanent disablement due to accident arising out of the use of motor vehicle, as indicated in the Second Schedule, to the legal heirs or the victim, as the case may be.

16. The aforesaid decisions make it quite clear that the Parliament by introducing [Section 163-A](#) in the MVA provided for payment of compensation on structured formula basis by mandating that the owner of a motor vehicle or the authorised insurer would be liable to pay compensation, as indicated in the Second Schedule in the case of death or permanent disablement due to accident arising out of the use of the motor vehicle, to the legal heirs or the victim, as the case may be in a claim made under sub- section (1) of Section 163-A



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of the MVA. In order to prove a claim of this nature the claimant would not be required to plead or establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act or neglect or default of the owner of the vehicle concerned.

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.

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.

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



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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.

When we analyze the impugned judgment of the High Court in terms of aforesaid discussion, we find that the counsel for the insurance company himself contended before the High Court that the policy of insurance was an Act policy and the risk that is covered is only in respect of persons contemplated under Section 147 of the MVA. It is the finding of fact which we have also upheld in this Judgment that the deceased was authorised by the owner of the vehicle to drive the vehicle. When we examined the facts of the present case in view of the aforesaid submission made, we are of the opinion that such an issue was required to be considered by the High Court in the light of the facts and evidence adduced in the case. On consideration of the Judgment and Order passed by the High Court we find the same to be sketchy on the aforesaid issue as to whether the claim could be considered under the provisions of Section 166 of the MVA.

However, whether or not the claimants would be governed with the terms and conditions of the insurance policy and whether or not the provisions of Section 147 of the MVA would be applicable in the present case and also whether or not there was rash and negligent



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driving on the part of the deceased, are essentially a matter of fact which was required to be considered and answered at least by the High Court.

26. While entertaining the appeal, no effort was made by the High Court to deal with the aforesaid issues, and therefore, we are of the considered opinion that the present case should be remanded back to the High Court to give its decision on the aforesaid issues.

The High Court will also consider the question of quantum of compensation, if any, to which the claimants might be entitled to, having regard to the earning capacity of the deceased and "Just Compensation", if any. Since the claim is a very old claim, we request the High Court to consider the matter as expeditiously as possible."

The deceased was neither the driver of the said vehicle nor the employee of the owner. He had purchased the said motorcycle from the real owner and met with an accident by dashing against another person without involving any other vehicle even before registering his name. The claim petition has been filed under Section 163 (A) of the Motor Vehicles Act, 1988 by the parents of the deceased as against the real owner as per the R.C. Book of the motorcycle and the Insurance Company in which the said vehicle was insured. However, Section 163(A) of the Motor Vehicles Act, 1988 cannot



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be applied wherein the owner himself is involved. It is an admitted fact that Section 163(A) of the Motor Vehicles Act, 1988 can be made only as against the owner of the vehicle and the Insurance Company of the motorcycle involved. Hence, following the law lay down by the case of ***Ningamma .Vs. United India Insurance Company Ltd.,*** claim petition under Section 163(A) of the Motor Vehicles Act, 1988 against the owner and the Insurance Company shall not be maintainable.

8. Hence, I have no other option than to conclude that the appeal under Section 163-A of the Act is not maintainable, since a person cannot be both the owner and a claimant and recipient and, therefore, the legal heirs could not maintain 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) as observed. In the instant case the deceased met with an accident while riding TVS Apache bike in the capacity of owner of



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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. In view of the same the award passed by the learned Tribunal is hereby set aside. The 2nd respondent is directed to pay the compensation amount and recover the same from the 1st respondent.

9. Accordingly, this Civil Miscellaneous Appeal is allowed. There shall be no order as to costs. Consequently, connected Civil Miscellaneous Petition is closed.

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.54 of 2013 on the file of the Motor Accidents Claims Tribunal cum Sub Judge, Kuzhithalai, within a period of eight weeks (8) from the date of receipt of copy of this judgment, less the amount, if any already deposited and thereafter, the appellant / Insurance Company is entitled to



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recover the same from the 2nd respondent. On such deposit, the claimant is permitted to withdraw the said amount, less the amount, if any already withdrawn, by making necessary application before the Tribunal.

11.01.2024

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

To

The Motor Accident Claims Tribunal
cum Sub Judge,
Kuzhithalai.

Copy to

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



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L.VICTORIA GOWRI, J.,

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