



C.M.A.(MD)No.920 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

Dated : **27.08.2024**

CORAM :

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

C.M.A(MD)No.920 of 2017
and C.M.P(MD)No.9731 of 2017

United India Insurance Co. Ltd.,
36-A/17, T.N.T.Complex,
Poovalur Road,
Lalkudi

... Appellant/2nd Respondent

Vs.

1.B.Parthiban
2.P.Kumar

... 1st Respondent/Petitioner

... 2nd Respondent/1st Respondent

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act to modify the judgment and award dated 04.04.2017 in M.C.O.P.No.63 of 2014 on the file of the Motor Accidents Claims Tribunal/Sub Court, Kulithalai.

For Appellant : Mr.G.Prabhu Rajadurai

For R1 &R2 : No appearance

J U D G M E N T

The instant appeal has been filed by the Insurance Company questioning the liability fixed by the Tribunal.



2. The 1st respondent filed a claim petition stating that while he was riding a two-wheeler belonging to the 2nd respondent herein, a Maruti Car came in a rash and negligent manner without following the traffic rules and caused a collision, which resulted in the 1st respondent sustained grievous injuries.

3. The 2nd respondent remained ex-parte before the Tribunal.

4. The appellant filed a counter stating that even as per the claim petition, the driver of the Maruti Car caused the accident and therefore, as the insurer of the two-wheeler, they are not liable to pay compensation.

5. Before the Tribunal, the 1st respondent examined himself as P.W.1 and doctor as P.W.2 and marked Ex.P.1 to Ex.P.7. The appellant examined R.W.1 to R.W.3 and marked Ex.R.1 to Ex.R.4.

6. The Tribunal held that the accident took place only due to the rash and negligent driving of the driver of the Maruti Car and since neither the driver nor the insurer of the Maruti Car were made as parties before the Tribunal, the appellant, as the insurer of the two-wheeler,



C.M.A.(MD)No.920 of 2017

would not be liable to pay compensation under Section 163(A) of the Motor Vehicles Act.

7. The learned counsel for the appellant submitted that the finding of the Tribunal is contrary to the settled position of law reiterated by the Hon'ble Supreme Court of India in **Ramkhiladi and another Vs. United India Insurance Company and another** reported in **2020(2) SCC 550** and submitted that the award of the Tribunal deserves to be set aside.

8. Though notice sent to the respondents was served, none entered appearance. Heard the learned counsel for the appellant and perused the records.

9. The only point for consideration in the instant appeal is whether the Tribunal was right in holding that the appellant is liable to pay compensation under Section 163(A) of the Motor Vehicles Act?

10. The admitted facts are that the accident took place only due to the rash and negligent driving of the driver of the offending vehicle,



namely, Maruti Car; that the 1st respondent/claimant, for the reason best known to him, had not impleaded the owner of the car or insurer of the car; and that the claimant is the borrower of the vehicle owned by the 2nd respondent herein. In such circumstances, the insurer of the two-wheeler would not be liable to pay compensation under Section 163(A) of the Motor Vehicles Act. This position of law is no longer *res integra*. In the judgment cited supra, the Hon'ble Supreme Court of India while considering a claim in similar circumstances 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 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."

The above observations are self explanatory. Therefore, this Court is of the view that the award of the Tribunal is unsustainable under law and therefore, liable to be set aside. Accordingly, the award is set aside.

11. However, the 1st respondent would be entitled to a sum of Rs.1,00,000 (Rupees One Lakh only) as per the contract of insurance as



C.M.A.(MD)No.920 of 2017

he stepped into the shoes of the 2nd respondent, who is the insurer. The appellant is therefore, directed to deposit the said sum of Rs.1 lakh with interest at the rate of 7.5% from the date of petition till the date of realization. On such deposit, the 1st respondent is permitted to withdraw the same by filing a suitable application.

12. In fine, this appeal is partly allowed. No costs.

27.08.2024

Index : Yes / No
Neutral Citation : Yes / No
CM

To

1. The Motor Accidents Claims Tribunal/Sub Court,
Kulithalai.

2. The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



C.M.A.(MD)No.920 of 2017

SUNDER MOHAN, J.

CM

Judgment made in
C.M.A(MD)No.920 of 2017
and C.M.P(MD)No.9731 of 2017

27.08.2024