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CMA.No.322 of 2020 & Cross Obj.No.55 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.01.2025

CORAM

THE HONOURABLE MR.JUSTICE **M.DHANDAPANI**

CMA.No.322 of 2020 & Cross Obj.No.55 of 2022

and

CMP.Nos.2165 of 2020 & 3045 of 2021

CMA.No.322 of 2020:

The New India Assurance Co. Ltd.,
Regional Office, Obli Towers,
D.B. Road, R.S.Puram, Coimbatore – 641 002.

...Appellant

Vs.

1. J.Mallika
2. J.Godwin David
3. Minor J.Allwin Jose
Rep. by his mother
4. Rose (*Died*)
5. Veerakumari
6. C.Celin Mary
7. Jeml
8. Josh

...Respondents

(R7 & R8 brought on record as LR's of the deceased R4, vide order of this Court dated 29.11.2023 made in CMP.Nos.13054, 13055 & 13058 of 2023 in CMA.No.322 of 2020)



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Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, as against the award and decree dated 29.08.2018 made in MCOP.No.436 of 2016 on the file of the Motor Accident Claims Tribunal/IV Additional District Court, Coimbatore.

For Appellant : Mr.R.Sivakumar

For Respondents : Mr.Neelakantan, for R1-R3, R7 & R8
: R5 – Exparte
: R6 – Given up

Cross Obj.No.55 of 2022:

1. J.Mallika
2. J.Godwin David
3. Minor J.Allwin Jose
Rep. by his mother

Rose (*Expired*)

...Cross Objectors

Vs.

1. The New India Assurance Co. Ltd.,
Regional Office, Obli Towers,
D.B. Road, R.S.Puram,
Coimbatore – 641 002..
2. Veerakumari
3. C.Celin Mary

...Respondents

Cross Objection filed under Order 41 Rule 22 of CPC, against the award and decree dated 29.08.2018 passed in MCOP.No.436 of 2016



CMA.No.322 of 2020 & Cross Obj.No.55 of 2022

on the file of the Motor Accident Claims Tribunal/IV Additional District Court, Coimbatore.

For Cross Objectors : Mr. Neelakantan

For Respondents : Mr.R.Sivakumar, for R1

COMMON JUDGMENT

Since both appeal and the cross objection are arising out of the very same accident, they are disposed of by way of this common judgment.

2. Challenging the liability fastened against the insurance company as well as the quantum of compensation awarded in MCOP.No.436 of 2016 dated 29.08.2018 on the file of Motor Accident Claims Tribunal/IV Additional District Court, Coimbatore, the insurance company has filed CMA.No.322 of 2020. Being dissatisfied with the quantum of compensation awarded by the tribunal, the claimants have filed Cross Objection No.55 of 2022.

3. For the sake of convenience, the parties are referred to as per their array in CMA.No.322 of 2020.



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4. It is the case of the claimants that, on 29.12.2015 at about 19.30 hours, when the deceased Joel was proceeding in the TVS Scooty Pep Plus bearing Regn.No.TN-38-AT-6301 as per the request of the 5th respondent, owner of the said vehicle, insured with the appellant herein on the Ukkadam Periyakulam road laid on the bank, without noticing the existence of speed breaker, he rode over the same due to poor light, due to which, the deceased sustained grievous injuries and succumbed to the same. Thereby, the claimants, who are the dependents of the deceased Joel filed a claim petition claiming a sum of Rs.15,00,000/- towards compensation. Before the tribunal, the claimants examined three witnesses viz., P.W.1 to P.W.3 and marked Exs.P1 to P11 and Ex.X.1 to X5 and on the side of the appellant and the respondents therein, no witness was examined, however, the Insurance policy was marked as Ex.R.1. After trial, the Tribunal awarded a sum of Rs.6,93,165/- towards compensation for the death of the deceased Joel, payable by the appellant-insurance company in favour of the claimants, after fixing 50% contributory negligence on the part of the deceased Joel. Aggrieved by the liability fastened as well as the quantum, the appellant-insurance



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company has filed the civil miscellaneous appeal in CMA.No.322 of 2020 and the claimants have filed Cross Objection No.55 of 2022.

5. Learned counsel for the appellant submitted that in the present case, the deceased himself is a tortfeasor, who borrowed the vehicle from the 5th respondent and drove the same in a rash and negligent manner and fell down and sustained fatal injuries and he is not the owner of the vehicle, for which, the appellant-insurer cannot be made liable to compensate the claimants and the tribunal instead of fixing 50% contributory negligence on the part of the deceased Joel, ought to have fixed the entire negligence on the part of the deceased and dismissed the claim petition itself, which the tribunal had failed to do. Hence, the claimants are not entitled to file claim petition under Section 166(1)(c) of the Motor Vehicles Act. In support of his contentions, the learned counsel relied upon the decision of this Court reported in **2020 (1) TN MAC 593** [National Insurance Company Limited Vs. Rani and others].

6. Per contra, the learned counsel appearing on behalf of the respondents 1 to 3, 7 & 8 submitted that though the deceased borrowed



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the vehicle from the 5th respondent and the deceased may have lost his life due to his negligence, even then, the claimants are entitled to claim compensation under Section 166(1)(c) of the Motor Vehicles Act. Thereby, the Tribunal, after careful consideration of the material documents placed before it passed the present impugned award, which cannot be said to be erroneous and accordingly, prayed for dismissal of this appeal.

7. Heard learned counsel on either side and perused the materials available on record.

8. The accident and the manner in which the accident happened are not disputed. Admittedly, the deceased borrowed the vehicle from the 5th respondent. The issue that arise for consideration in this appeal is whether the borrower of the vehicle is entitled for compensation in terms of Section 166 of the Motor Vehicles Act.

9. The issued involved in the present case is covered by the decision of this Court reported in **2020 (1) TN MAC 593** [National



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Insurance Company Limited Vs. Rani and others], the relevant portion of the same reads as follows:

“9. The recent Judgment of Hon'ble Supreme Court in the case of Ramkhiladi and Another Vs. United India Insurance Co. Ltd and Another [2020 (1) TN MAC 1 (SC)], elaborately discussed the scope of claim petition under Section 163 (A) of the Motor Vehicles Act. Undoubtedly, the Special Provision cannot be read in isolation and the Apex Court considered Sections 147, 166 and 163-A of the Motor Vehicles Act. Thus the Special Provision is to be read conjointly and in consonance with the object, purpose as well as the intention of the Legislature.

10. In the event of interpreting any Special Provision in isolation to the other provisions of the Statute, then the very object would be defeated and therefore, the Courts cannot make an interpretation of a Special Provision, which is otherwise intended to grant certain benefits in respect of grant of compensation in the event of not establishing negligence. Thus, this Court is of the considered opinion that, even the Personal Accident Coverage cannot be considered in certain cases, where the victim is not the registered owner of the vehicle. Three conditions are required even under Personal Accident Policy (which is not a statutory coverage in terms of Section 147 of the Act.). The said three conditions are mandatory, so as to avail compensation under the Personal Accident Policy (not a statutory coverage in terms of Section 147 of the Act). The conditions are:-



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(a) the owner-driver is the registered owner of the vehicle insured;

(b) the owner-driver is the insured named in the policy;

(c) the owner-driver holds an effective driving license, in accordance with the provisions of Law.

11. With reference to Section 163-A of the Motor Vehicles Act, 1988, the Hon'ble Supreme Court has taken a view that if a borrower of the vehicle met with an accident while riding the vehicle, he cannot claim compensation under Section 163-A of the Act. The reason being in the event of granting compensation without adjudication of negligence, then the same would result in defeating the very object of the Act, under Sections 147 and 166 of the Motor Vehicles Act. When Section 147 categorically enumerates requirements of policies, limits and liabilities, the same cannot be whittled down, while dealing with the claim petitions under Section 163-A of the Act. All these provisions are to be read conjointly for the purpose of granting the benefit of Special Provision enacted under Section 163-A of the Act, for payment of compensation on structured formula basis. When the Special Provision is specifically provided for a structured formula basis, it cannot be read in isolation with reference to the nature of the contracted policy and the requirement of policy and limited liabilities clauses, which all are well enumerated under the provisions of the Act. Thus, this Court is of the considered opinion that a person, who borrowed a vehicle from the registered owner



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and while driving the same met with an accident sustained injuries or dead, then he is not entitled to claim any compensation under Section 163-A of the Act and even for claiming Personal Accident Policy (not a statutory coverage in terms of Section 147 of the Act), he is bound to establish the three mandatory conditions and in the absence of compliance with the said three conditions, he is not entitled for compensation.

12.This Court is of the considered opinion that the Insurance Company as well as the Policy Holders are bound by the terms and conditions of the contract agreed between the parties. In the event of superseding the terms of contract, then the very legality of the Law of Contract is sacrificed under the provisions of the Indian Contract Act, which is unacceptable and therefore, in respect of the contract, Courts are bound to consider the terms and conditions and the binding clauses between the parties.

13. The Hon'ble Supreme Court in the judgment, cited supra, in unequivocal terms held that in a claim under Section 163-A of the Act, there is no need for the claimants to plead or establish the negligence and/or that the death in respect of which the claim petition is sought to be established was due to wrongful act, neglect or default of the owner of the vehicle concerned. It is also true that the claim petition under Section 163-A of the Act is based on the Principle of 'No Fault Liability'. However, at the same time, the deceased has to be a third party and cannot maintain a claim under Section 163-A of the Act, against the



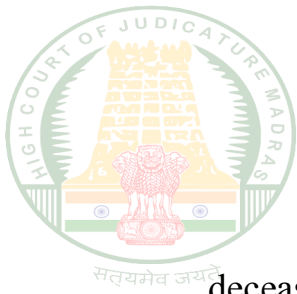
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owner/Insurer of the vehicle, which is borrowed by him as he will be in the shoes of the owner and he cannot maintain a claim under Section 163-A of the Act, against the owner and Insurer of the vehicle. In the case before the Hon'ble Supreme Court, the finding was that the parties are governed by the contract of Insurance and under the contract of Insurance, the liability of the Insurance Company would be qua third party only. Thus the deceased cannot be said to be a third party with respect to the insured vehicle. There cannot be any dispute that the liability of the Insurance Company would be as per the terms and conditions of the Contract of Insurance. The insurance policy covers the liability incurred by the insured in respect of death or bodily injury to any person (including an owner of the goods or his authorized representative) carried in the vehicle or damage to any property of a third party caused by or arising out of the use of the vehicle. Thus Section 147 does not require an Insurance Company to assume risk for death or bodily injury to the owner of the vehicle."

10. A perusal of the above decision makes it clear that for claim under the personal accident coverage, the owner-driver must be the registered owner of the vehicle insured; the owner-driver is the insured named in the policy and the owner-driver holds an effective driving license, in accordance with the provisions of Law. In the present case, the



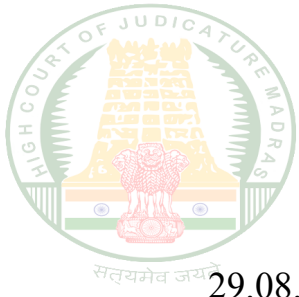
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deceased had borrowed the vehicle and he is not the owner of the vehicle and the insurance policy does not stand in the name of the deceased. Therefore, the personal accident coverage cannot be extended to the deceased, though he has stepped into the shoes of the owner of the vehicle, as there is no complete fulfilment of all the conditions.

11. Further, for maintaining a claim u/s 166(1)(C) of the MV Act, the deceased has to be a third party. In the present case, as already held above, the deceased had stepped into the shoes of the owner of the vehicle and, therefore, he cannot be termed to be a third party to have his claim covered under Section 166(1)(C) of the MV Act. Without considering these factual and legal aspects, the Tribunal has passed award, which is not sustainable and the same has to necessarily be interfered with.

12. In view of all the above, the Cross Objection No.55 of 2022 filed by the respondents 1 to 4/claimants stands dismissed and the Civil Miscellaneous Appeal filed by the Appellant-insurance company in CMA.No.322 of 2020 stands allowed and the judgment and decree dated



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29.08.2018 passed by the Tribunal in MCOP.No.436 of 2016 is set aside.

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The appellant-Insurance Company is permitted to withdraw the entire compensation amount, if any, already deposited by them. However, the respondents 1 to 3, 7 & 8 are at liberty to workout their remedy in the manner known to law as against the 5th and 6th respondents. No costs. Consequently, the connected miscellaneous petitions are closed.

28.01.2025

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NCC : Yes/No
Index : Yes/No
Speaking Order : Yes/No

To:

1. The Motor Accident Claims Tribunal,
IV Additional District Court,
Coimbatore.
2. The Section Officer,
VR Section, High Court of Madras.



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M.DHANDAPANI, J.

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