



CMA.No.2926 of 2021

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :13.02.2025

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

CMA No.2926 of 2021

The Divisional Manager
M/s.ICICI Lombard General Insurance Co.Limited
NO.142, 1st floor,
Latha steel
Near ECR Road
Kottupalayam
Pondicherry-605 008

... Appellant

Vs.

1. Arul Merry
2. Minor Prittan
3.Mariya Pushpam
4.Eassaku
(2nd respondent being a minor
rep. By mother/natural guardian) ... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act 1988, against the judgment and decree dated 25.01.2021 in MCOP.No.1130 of 2017 on the file of the Motor Accidents Claims Tribunal, (Special Sub-Ordinate Judge) at Cuddalore.

For appellant : M/s.R.Sree Vidhya

For Respondents : served-No appearance



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JUDGMENT

Aggrieved by the award passed by the Motor Accidents Claims Tribunal directing the appellant to pay a compensation of Rs.5,50,000/- to the respondents/ claimants, the appellant/ Insurance company has come before this Court by way of this appeal.

2. Though the respondents/claimants are served and their names appear in the cause list, there is no representation for the respondents/claimants.

3. Heard the arguments of the learned counsel for the appellant.

4. It is the case of the claimants that the husband of the 1st claimant, the father of the 2nd claimant and the son of the claimants 3 and 4 namely Jesudoss was riding his motorbike bearing registration number TN-10-AJ-0844 on 08.04.2016, in Aandimadam-Melaneduvai main road. When he was nearing ITI bus stop, an unknown person suddenly crossed the road and in order to avoid the accident, the deceased applied the brake and lost control of the bike. As a result of which, his two wheeler hit against the palm tree and the deceased was thrown out of the motorbike and sustained grievous injuries over his



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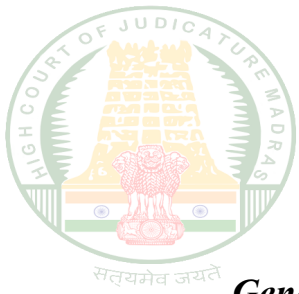
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head and other vital parts of the body. Immediately, the deceased was taken to Government Hospital at Jayankondam, where the doctor declared him dead. Therefore, the claimants laid the instant claim petition seeking a compensation of Rs.7,00,000/- for the death of the deceased, against the appellant/insurer of the two-wheeler, owned by the deceased.

5. The appellant filed a counter and raised the question of maintainability of the claim petition under Section 163-A of Motor Vehicles Act. It is the case of the appellant that the deceased himself was a tortfeasor and hence, he cannot be the person liable to pay compensation.

6. The Tribunal, on appreciation of evidence available on record, came to the conclusion that the appellant/ Insurance company was liable to pay compensation to the claimants and directed the appellant to pay a sum of Rs.5,50,000/- . Aggrieved by the same, the appellant/ Insurance company has come before this court by way of this appeal.

7. The learned counsel for the appellant, by relying on the judgment of Division Bench of this Court in the case of *M/s. Tata AIG*



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General Insurance Company Limited Vs Shanmugam in CMA.No.

1395 of 2021, would submit that in case of death of owner of a vehicle, due to his own negligence, the owner is not entitled to maintain a claim petition against the insurer of his own vehicle.

8. The maintainability of a claim petition under Section 163-A of the Motor Vehicles Act under similar circumstances was considered by the Division Bench of this Court in the above mentioned case and relevant observation of Bench reads as follows:-

“25. The question before us is whether a claim petition can be filed before the Claims Tribunal under Section 163A by an owner/insured. Considering the language of Chapter XI and the decision in Ramkhiladi's case, the first question is answered against the claimant by observing that an owner/insurer cannot approach the Motor Accident Claims Tribunal by filing a claim petition under Section 163A of the Motor Vehicles Act, 1988 for the injuries sustained by him relying upon the personal accident cover. This does not prevent the owner of a vehicle, who has taken a personal accident cover, from claiming



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compensation from his insurer. However, the Claims Tribunal is not the Forum, before which he can make his claim, as he is not a Third Party. It is open to the owner of the vehicle to directly approach the insurer on the basis of the personal accident cover. In case, the Insurance Company fails to compensate him, it is well open to him to approach the Consumer Forum or any other appropriate Forum. In view of the answer to the first question as referred to us, the second question does not arise for consideration”.

9. In the case on hand, it is not in dispute that the vehicle involved was owned by the deceased Jesudoss and the same was insured with the appellant/Insurance Company. Therefore, as a owner of the vehicle, he is not entitled to maintain a claim petition under Section 163-A of the Motor Vehicles Act as held by the Division Bench in the above mentioned case.

10. Accordingly, the Tribunal ought not have entertained the claim petition filed by the claimants under Section 163-A of the Motor



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Vehicles Act and the same is intended for third parties.

11. As far as the liability of the insurance company to pay a contractual amount in view of the extra premium paid by the insured, it is for the claimants to file appropriate separate claim before the insurance company. If the same is refused, the claimants are entitled to explore other remedies available under the law. Therefore, this court comes to the conclusion that the claim petition filed by the respondents before the Motor Accidents Claim Tribunal under Section 163-A is not maintainable in the facts and circumstances of the case and accordingly, the civil miscellaneous appeal is allowed and the claim petition stands dismissed with liberty to the respondents/claimants to approach the insurance company seeking payment of amount under the special contract.

12. In view of the fact that the award amount is already deposited by the insurance company, the appellant/insurance company is permitted to withdraw the amount already deposited by it with accrued



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interest pursuant to the allowing of this appeal. No costs.

13.02.2025

Index: Yes/No
Internet: Yes/No
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To

1. Motor Accident Claims Tribunal,
Special Sub-Ordinate Judge, Cuddalore.
2. The Section Officer,
VR Section,
High Court, Madras.



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S.SOUNTHAR, J.

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