



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.03.2025

WEB COPY

CORAM

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.M.A.No.3431 of 2021

and

C.M.P.No.19778 of 2021

M/S.The National Insurance Company Ltd.,
Represented by its Divisional Manager,
No.33, Promenade Road,
Contonment,
Trichy-1.

... Appellant

VS.

1.Veeralakshmi

2.Minor Aravindhan

(Minor Represented by his next friend and natural guardian and mother Veeralakshmi)

3.Veeramani

4.Rengasami (Died)

5.Rajeswari

... Respondents

(Respondent-4 Died. Respondent-5 (who is already on record) are recorded as LRs of the deceased R-4 Viz Rengasami as per memo dated 18.12.2024 are recorded and vide court order dated 18.12.2024)



C.M.A.No.3431 of 2021

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the award passed in MACT O.P.No.887 of 2015, dated 29.04.2021, on the file of the Motor Vehicle Accidents Claims Tribunal, Principal District Judge, Perambalur.

For Appellant : M/s.N.B.Sureka

For Respondents : No Appearance

J U D G M E N T

Aggrieved by the award passed by the Motor Accident Claims Tribunal (Principal District Judge), Perambalur in M.C.O.P.No.887 of 2015, dated 29.04.2021, the Appellant/Insurance Company has filed this appeal.

2. It is not in dispute that the husband of the 1st claimant and father of the 2nd claimant namely Rameshkumar died in a road accident that had occurred on 22.11.2014. It was the case of the claimant that deceased-Rameshkumar was riding the motorcycle belongs to the 1st respondent insured with the appellant-insurance company proceeding from west to east direction on the extreme left side of the road. When deceased was proceeding by following the traffic rules, a dog suddenly crossed the road,



C.M.A.No.3431 of 2021

in order to avoid any injury to the dog, the deceased had applied sudden brakes and as a result of which, he lost control of the vehicle and fell down.

Due to the said accident, he sustained fatal injury and died in hospital.

Therefore, a claim petition was filed seeking compensation of Rs.20,00,000/-.

3. The Appellant-Insurance Company filed counter and opposed the claim petition on the ground that accident had occurred due to the negligence on the part of the deceased. It was further contended by the Insurance Company that deceased being a tort-feasor, the claim petition cannot be maintained seeking compensation.

4. Before the Tribunal, 1st claimant was examined as PW.1 and yet another witness was examined as PW.2. On behalf of the claimants, 22 documents were marked as Exs.P1 to P22. On behalf of the Appellant-Insurance Company, two witnesses were examined as RW.1 and RW2 and 2 documents were marked as Exs.R1 and R2. The copies of final report in Cr.No.753/2014, rough sketch and A.R. Copy of deceased Rameshkumar were marked as Exs.X1 to X3 respectively.



C.M.A.No.3431 of 2021

5. The Tribunal based on the evidence available on record, rejected the objection raised by the Appellant/Insurance Company and held that the Appellant-Insurance Company was liable to pay compensation and quantified the amount payable at Rs.5,00,000/-. Aggrieved by the same, the Appellant-Insurance Company has come before this Court.

6. The respondents 1 and 2/claimants were served and their names appear in the cause list. The 1st respondent is the wife of the deceased and 2nd respondent is the minor child of the deceased. The 2nd respondent is represented by 1st respondent. She was served and her name appears in the cause-list, however, there is no representation for the 1st respondent. The 3rd respondent is the owner of the vehicle and he was also served, however, there is no representation. The 4th respondent is the father of the deceased and he died pending appeal and 5th respondent namely Rajeswari was recorded as his legal representative. The 5th respondent mother of the deceased was also served and her name appears in the list, however, there is no representation.



C.M.A.No.3431 of 2021

7. Heard the arguments of the learned counsel appearing for the appellant-insurance company and perused the typed-set of papers and other records.

8. The learned counsel appearing for the Appellant/Insurance Company would submit that the accident had occurred only due to the negligence on the part of the deceased and hence, the claimants are not entitled to maintain the claim petition seeking compensation. Therefore, the learned counsel submits that the Tribunal ought have dismissed the claim petition.

9. A perusal of the averments in the claim petition would indicate that no third party was involved in this case and accident had occurred when deceased applied the sudden brake in order to avoid his vehicle from hitting the dog, which crossed the road suddenly. The 1st claimant, who was examined as PW.1 also admitted that accident had occurred only due to application of sudden brake by the deceased. Therefore, it is clear that the accident had occurred only due to the negligence on the part of the deceased. When deceased is a tort-feasor, the claimants are not entitled to



C.M.A.No.3431 of 2021

maintain a claim petition seeking compensation. The Tribunal in its order observed that when application has been filed under Section 163A of the Motor Vehicles Act, 1988, Insurance Company cannot take a defence of negligence.

10. The Tribunal allowed the claim petition on the ground that in an application filed under Section 163A of the Motor Vehicles Act, the insurer could not take the defence of negligence. If the application is filed under Section 163A of the Motor Vehicles Act, 1988 by a third party, the insurer is not entitled to take the defence of negligence and irrespective of the proof of negligence, the claimants are entitled to get compensation. However, in the case on hand, the claim petition has been filed by the driver himself under Section 166, therefore, he cannot take advantage of his own wrong and to seek compensation against the owner of the vehicle or insurer. In the cases like this the driver, who borrowed the vehicle from owner, steps into the shoes of owner and hence, it cannot be treated as a petition by third party. Therefore, petition filed under Section 163A is not maintainable.



WEB COPY

11. In this regard, it would be appropriate to refer to the judgment of the Apex Court in ***Ramkhiladi and another vs. The United India Insurance Company and another*** reported in (2020) 2 SCC 550, the relevant portion reads as follows:-

*“9.5 It is true that, in a claim under Section 163A 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 163A 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 163A of the Act against the 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 163A of the Act against the owner and insurer of the vehicle bearing Registration No. RJ 02 SA 7811.
... ..”*

12. The law laid down by the Apex Court in the above mentioned case law is squarely applicable to the facts of the present case. Here also, the



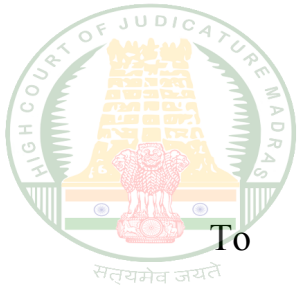
C.M.A.No.3431 of 2021

deceased borrowed the vehicle from the owner and the accident had occurred due to his own fault. In such circumstances, the claim petition filed by claimants under Section 163A of the Motor Vehicles Act, is not maintainable.

13. Accordingly, the award passed by the Tribunal is set aside and the Civil Miscellaneous Appeal stands allowed. The claim petition stands dismissed. No costs. Consequently, the connected civil miscellaneous petition is closed.

05.03.2025

Index :Yes
Speaking order :Yes
Neutral Citation :Yes
dm



C.M.A.No.3431 of 2021

To

WEB COPY

1.The Motor Vehicle Accidents Claims Tribunal,
Principal District Judge, Perambalur.

2.The Section Officer,
VR Section,
High Court, Madras.



WEB COPY



C.M.A.No.3431 of 2021

S.SOUNTHAR, J.

dm

C.M.A.No.3431 of 2021

05.03.2025