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CMA.No.3656 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :18.03.2025

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

CMA No.3656 of 2021

1.Poongodi
2. Minor Roopan
3. Minor Bhuvanamery
(Minors 2 and 3 rep by their guardian/mother
Poongodi) ... Appellants

Vs.

1.Shriram General Ins.Co.Ltd.,
Rep By Its Manager, 8, Epip, Riico, Industrial
Area, Sitapura, Jaipur, Rajasthan 302 022.
2.Sowriyammal ... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, to set aside the award and judgment made in M.C.O.P.No.105 of 2014 on the file of the Motor Accident Claims Tribunal Cum IV Additional District and Sessions Judge, Bhavani, Erode District dated 07-12-2020.

For Appellant : Mr.C.Kulanthaivel
For Respondent :M/s.V.Pushpa
R2- No appearance



CMA.No.3656 of 2021

WEB COPY

JUDGMENT

The appeal has been filed challenging the award passed by the Motor Accident Claims Tribunal directing the first respondent/ Insurance company to pay a sum of Rs.2,00,000/- to the claimants under the Personal Accident Coverage. Aggrieved by the same, the claimants have come before this court by way of this appeal.

2. According to the claimants, on 03.02.2013, the husband of the first claimant and the father of the claimants 2 and 3 namely Saleth Raj was driving his lorry on Vathalakundu to Sempatti Road. When the lorry came near the Sriram Coconut company, the road users suddenly crossed the road. Therefore, the deceased, in order to avoid the accident, turned the lorry and applied sudden brake. Due to the application of sudden brake, the lorry got capsized and the accident had occurred. The deceased sustained grievous injuries and on the way to the hospital, he died. Hence, the claimants laid a claim petition seeking compensation of Rs.15,00,000/-



CMA.No.3656 of 2021

WEB COPY

3. The second respondent is the mother of the deceased and she remained *exparte* before the Tribunal. The first respondent, insurer of the lorry filed a counter and contested the claim on the ground that the deceased, being a torfeasor was not entitled to maintain the application seeking compensation.

4. The Tribunal, based on the evidence available on record, came to the conclusion that the deceased, who was owner-cum-driver of the lorry, dashed against the tamarind tree standing on the side of the road and hence, invited the accident. Since the Tribunal came to the conclusion that the deceased himself was a torfeasor, dismissed the claim petition filed by the dependents of the deceased under Section 163-A of Motor Vehicles Act. Aggrieved by the same, the claimants have come before this Court.

5. The learned counsel for the appellants, by relying on the judgment of Hon'ble Apex Court in the case of ***Shivaji and another***



CMA.No.3656 of 2021

WEB COPY *Vs. Divisional Manager, United India Insurance Company Limited*

and others reported in 2018 (2) TN MAC 149(SC), submitted that defense of negligence cannot be taken as a defense in a claim petition filed under Section 163-A of Motor Vehicles Act. He further submitted that in an application filed under Section 163-A of Motor Vehicles Act, the claimants need not prove the negligence on the part of the deceased. Hence, according to him, the claimants are entitled to compensation.

6. The case law relied on by the learned counsel for the appellants was cited before the Tribunal also. The Tribunal had rightly answered the same. The first respondent, insurer of the lorry has not raised the defense of negligence but questioned the maintainability of the claim petition under Section 163-A of MV Act. If a claim petition is filed against the owner and insurer of a third party vehicle under Section 163-A of Motor Vehicle Act, the claimants need not plead and prove negligence in order to get compensation, as per the structured formula. The insurer of the offending vehicle cannot take the defense



CMA.No.3656 of 2021

WEB COPY of absence of negligence on the part of its vehicle's driver as a defense.

In the case on hand, no claim has been filed against a third-party vehicle. The owner-cum-driver of the lorry died in an accident as he dashed against a tamarind tree found standing on the side line of the road. The Tribunal found that the accident had occurred only due to the negligence on the part of the deceased. The claim petition was filed under Section 163-A of MV Act against the insurer of the lorry, which was owned and driven by the deceased himself. Therefore, it is clear that the deceased himself is a tortfeasor and the claimants filed the claim petition in their capacity as dependents of the tortfeasor. It is settled by various decisions of this court that a claim petition under Section 163-A is maintainable only as against the third-party vehicle. The dependents of the tortfeasor cannot take advantage of his negligence and maintain an application against his own insurer by filing application under Section 163-A of MV Act. In fact, the Division Bench of this Court in the case of ***TATA AIG General Insurance Company Limited Vs. Shanmugam*** reported in ***MANU/TN/4559/24*** held that a claim petition for recovery of



CMA.No.3656 of 2021

WEB COPY

compensation payable under personal accident coverage is not at all maintainable before the claims Tribunal and dependents of the tortfeasor shall file application either before the Consumer forum or any other competent forum for recovery of the amount under special contract covering personal accident. This court in a judgment passed in the case of ***The Manager, M/s.IFFCO-TOKIO General Insurance Co., Ltd,Gobichettipalayam Vs Nataraj in CMA.No.3414 of 2019*** had occasioned to consider the judgment in ***Shivaji*** case cited Supra and held that the owner cannot maintain a claim petition against the insurance company for his own negligence. The relevant observations reads as follows:-

“16.The learned counsel appearing for the appellant contended that the Hon'ble Apex Court in the judgment reported in 2017 (2) TN MAC 753 (SC) [United India Insurance Co. Ltd., Vs. Sunil Kumar and another], held that adjudication under Section 163-A of the Act can be made without requirement of proving negligence on the driver/owner of the vehicles involved in the accident. The Hon'ble Apex Court in the subsequent judgment reported in 2018 (2) TN MAC 149



CMA.No.3656 of 2021

WEB COPY

(SC) [Shivaji and another Vs. United India Insurance Co. Ltd.], following the earlier judgment reported in **2017 (2) TN MAC 753 (SC)** referred to supra, has held that it is not open to the Insurance Company to raise the issue of negligence and if permitted to raise such issue, it would amount to defeating the intention of legislature. The learned counsel referring to paragraph no.8 of the judgment reported in **2017 (2) TN MAC 753 (SC)** referred to supra, pointed out that the Hon'ble Apex Court had held that the negligence on the part of the owner/driver is not required to be adjudicated and contended that third party claimant need not plead and prove the negligence on the part of the driver/owner. The Hon'ble Apex Court did not hold that owner can maintain a claim petition against the insurer. In the subsequent judgment reported in **2018 (2) TNMAC 149 (SC) [Shivaji and another Vs. United India Insurance Co. Ltd.]**, the Hon'ble Apex Court followed the earlier judgment and did not give a finding that owner can maintain the claim petition against the Insurance Company for his own negligence”

7. The Hon'ble Apex Court in the case of **Ningamma and**



CMA.No.3656 of 2021

WEB COPY **Others Vs United India Insurance Co., Limited reported in AIR2009**

SC 3056 = MANU/SC/0802/2009 held that the legal representatives of the deceased tortfeasor cannot maintain an application under Section 163-A of Motor Vehicles Act. The relevant observation reads as follows:-

“19.We have already extracted Section 163-A of the MVA hereinbefore. A bare perusal of the said provision would make it explicitly clear that persons like the deceased in the present case would step into the shoes of the owner of the vehicle. In a case wherein the victim died or where he was permanently disabled due to an accident arising out of the aforesaid motor vehicle in that event the liability to make payment of the compensation is on the insurance company or the owner, as the case may be as provided under Section 163-A. But if it is proved that the driver is the owner of the motor vehicle, in that case the owner could not himself be a recipient of compensation as the liability to pay the same is on him. This proposition is absolutely clear on a reading of Section 163-A of the MVA. Accordingly, the legal representatives of the deceased who have stepped into the shoes of the owner of the motor vehicle could not have claimed compensation



CMA.No.3656 of 2021

WEB COPY under Section 163-A of the MVA.

20. 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”.

8. The above case law squarely applicable to the facts of the present case. In view of the discussions made earlier, the judgment relied on by the learned counsel for the appellants is not helpful to him to sustain his arguments.

9. The Tribunal rightly held that the claim petition filed by the dependents of the tortfeasor against his own insurer is not maintainable under Section 163-A of Motor Vehicles Act. I do not find anything to interfere with the said findings and hence, the appeal stands dismissed.

10. The Tribunal, after holding that the claim petition was not



CMA.No.3656 of 2021

WEB COPY maintainable proceeded to direct the insurer to pay a sum of Rs.2,00,000/- under personal accident coverage. Though the law laid down by the Division bench of this court in the above mentioned case is otherwise, since the respondent insurance company has not filed any appeal challenging the direction issued by the Tribunal. I do not want to disturb the said direction. Accordingly, the civil miscellaneous appeal stands dismissed. No costs.

18.03.2025

Index:Yes
Internet:Yes
Speaking Order:Yes
Neutral Citation:Yes
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To

1. Motor Accident Claims Tribunal,
IV Additional District and Sessions Judge,
Bhavani, Erode District
2. The Section Officer,
VR Section,
High Court, Madras.



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CMA.No.3656 of 2021

S.SOUNTHAR, J.

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CMA No.3656 of 2021

18.03.2025