BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.03.2025

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

C.M.A.(MD)No.1234 of 2024

and

C.M.P.(MD)No.14854 of 2024

The Branch Manager,
ICICI Lombard Insurance Co.Ltd.,
2nd and 3rd Nungambakam High Road,
Chennai – 600 034. ... Appellant

Vs.

1. Shakila Begum

2. Shahul Hammed
(Memo dated 17.12.2024 in USR No.47511 is recorded, to the effect the issuance of notice to R3 is dispensed with, as he was set ex-parte before the Tribunal, vide Court order dated 07.01.2025 made in CMA(MD)No.1234 of 2024)

3. Mohammed Usama ... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, to set aside the judgment and decree passed in M.C.O.P.No.913 of 2020 dated 06.10.2023 on the file of the Motor Accident Claims Tribunal cum Special District Judge No.II, Thiruchirappalli.

For Appellant : Mr.V.Muthu Kamatchi

For Respondents : Mr.K.Murugan

JUDGMENT

This Civil Miscellaneous Appeal has been filed challenging the order made in M.C.O.P.No.913 of 2020 dated 06.10.2023 on the file of the Motor Accident Claims Tribunal cum Special District Judge No.II, Thiruchirappalli.

2. For the sake of convenience, the parties herein are referred to, as per their rank before the Tribunal.

3. The brief facts in a nutshell are as follows:

(i) The petitioners are the legal heirs of the deceased. The first respondent is the owner of the vehicle involved in the accident and the second is the insurance company with which the vehicle involved was insured. The petitioners are the parents of the deceased Mohamed Thoufeek, who was 21 years old at the time of the accident.

(ii) On 21.10.2019 at about 8:30 a.m., while the deceased was riding his two-wheeler motorcycle bearing Registration No.TN-06-8571 from his residence to his college, while traveling along the Lakshmipuram Akash Marble another two-wheeler bearing Registration No.TN-56-E-5726 which was travelling in front of him suddenly swerved vehicle to the right side. As a result of which the deceased collided with the said two-wheelers, fell down, sustained severe head injuries, and died on the way to hospital on the same day.

(iii) Seeking compensation for the death of their son, the petitioners have laid the claim petition before the Tribunal against the insurance company, as the motorcycle involved was owned by the petitioner, who is the father of the deceased.

(iv) The Tribunal examined two witnesses on the side of the petitioners, and marked P.W.1 and P.W.2 and eight documents were marked as Ex.P.1 to Ex.P.8. On the side of the respondents, two witnesses were examined as R.W.1 and R.W.2 and one document was marked as Ex.R.1 was marked. The final report submitted by the Sub Inspector of Police, Trichy, was marked as a third party document Ex.X.1.

(v) On the basis of arguments made by both parties, the evidence deposed and the documents marked, the Tribunalpartly allowed the MCOP by awarding a compensation of Rs.15,00,000/- with interest at the rate of 7.5% per annum from the date of the petition till the date of deposit. Challenging the same, the present appeal has been filed.

4. The learned Counsel appearing for the appellant submitted that the *lis* in hand is covered by the judgment of the Honourable Division Bench of this Court in C.M.A.No.1395 of 2021, dated 19.08.2024. The deceased was the rider of the motor vehicle involved in the accident on the fateful day. The said motorcyle was owned by his father. The nature of the accident is that the death of the deceased happened because of the collusion between the motorcycle driven by the deceased and another motorcycle. Having not impleaded the insurance company with which the other motorcycle involved in the accident as respondent in the motor claims original petition, the petitioners have preferred to proceed against the insurance company with which the motorcycle driven by the deceased was insured. Since the deceased had used his father's vehicle and had stepped into the shoes of his father while riding the said vehicle, he would be considered as the owner. Therefore, he cannot lay a motor accident

claim before the Tribunal under Section 163-A of Motor Vehicles Act, 1988 and accordingly, the learned Counsel pressed for allowing the appeal.

5. The learned Counsel appearing for the respondent / claimant submitted that the Tribunal had properly adjudicated the case on the basis of evidence and documents on record and therefore, the same need not be interfered.

6. Heard the learned Counsel appearing for the appellant and the learned Counsel appearing for the respondents and carefully perused the materials available on record.

7. No doubt the *lis* in hand is partly covered by the judgment of this Court in CMA.NO.1395 of 2021 and the relevant portion of the same is extracted hereunder:

> *"21. However, with the judgment of the Hon'ble Supreme Court in Ramkhiladi and another Vs. United India Insurance Co.Ltd reported in 2020 ACJ 627, this issue as to*

whether an owner cum driver of the vehicle could claim compensation for any death or bodily injury in a road accident by filing a petition under Section 163A of the Act before the Claims Tribunal has now been set to rest. 22. In this case, the deceased was traveling in a motor cycle. Though the accident had occurred on account of the collision with another motor cycle, the deceased's legal representatives had chosen to file the claim only against the owner of the vehicle, in which the deceased was traveling and the insurer of that vehicle. An objection was raised by the Insurance Company that the insured and insurer of the other motor vehicle, who had driven the vehicle in a rash and negligent manner, had not been impleaded and that the Insurance Company was not liable to compensate the claimant.

23. The following arguments had been made by the learned counsel for the claimant. "3.3. .... Section 163A of the Act has to be interpreted in keeping with the intention of the Legislature and the social perspective it seeks to achieve. It is a provision which is beneficial in nature and it has been enacted as a measure of social security. It is submitted that Section 163A of the Act commences with a "non obstante" clause. Liability to pay the compensation is on "owner of the motor vehicle" or "the authorized insurer". It is submitted that the word "owner" has been *defined under Section 2(30) to mean "a person in whose name a motor vehicle stands registered, and where such person is a minor, the guardian of such minor, and in relation to a motor vehicle which is the subject of a hirepurchase, agreement or an agreement of lease or an agreement of hypothecation, the person in possession of the vehicle under that agreement." .... 3.4. It is further submitted by the learned counsel appearing on behalf of the appellantsoriginal claimants that for claiming the compensation under Section 163A of the Act, the claimants are only required to prove that the death or permanent disablement is as a result of the accident arising out of the use of motor vehicle and it will cover those who are themselves driving a vehicle, the passengers and also pedestrians. It is submitted that in an application under Section 163A of the Act, fault of the owner of the vehicle or vehicles concerned or of any other person need not be established."*

24. The learned Judges relying on the judgment in Ningamma's case (referred supra) held that the deceased in the case before them stepped into the shoes of the owner/borrower and proceeded to hold that since the deceased himself was the borrower of the vehicle from the owner of the vehicle, he steps into the shoes of the owner, as he is not a third party. The learned Judges thereafter *observed as follows: "5.5. 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 ...." (emphasis supplied by us)*

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 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."*

8. The question as to whether a claim petition can be filed before Motor Accdient Claims Tribunal under Section 163-A of Motor Vehicles Act, 1988, by an owner / injured person has already been settled by the Honourable Supreme Court in ***Ramkhiladi and another Vs. United India Insurance Company Limited*** reported in ***2020 ACJ 627***. Following the said judgment, the Honourable Division Bench of this Court has also confirmed that an owner / insurer cannot approach Motor Accidents Claims Tribunal by filing a claim petition under Section 163-A of Motor Vehicles Act, 1988. Fully fortified by the aforesaid judgment, I'm of the considered view that the Tribunal ought not to have passed the order fixing the liability on the second respondent / Insurance company.

9. In view of the same, liberty is granted to the claimants / respondents to approach the second respondent / insurance company on the basis of the personal accident cover for sanction of appropriate compensation under the Personal Accident Cover of the insurance policy. Accordingly, the order passed by the Tribunal is set aside. The claimants may submit an application for compensation under the Personal Accident Cover of the insurance policy, and the Insurance Compnay shall consider and dispose of the same in accordance with law, without insisting on the bar of limitation, within a period of eight weeks from the date of receipt of such application.

10. Accordingly, this Civil Miscellaneous Appeal is allowed. No costs. Consequently, connected miscellaneous petition is closed.

05.03.2025

NCC : Yes / No
Index : Yes / No
Internet : Yes
jbr

To

1. The Special District Judge (MACT),
   Tiruchirappalli.

2. The Section Officer,
   Vernacular Records,
   Madurai Bench of Madras High Court,
   Madurai.

L.VICTORIA GOWRI, J.,

jbr

C.M.A.(MD)No.1234 of 2024

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