IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 25 / 07 / 2024

JUDGMENT PRONOUNCED ON : 29 / 08 / 2024

CORAM

THE HONOURABLE MR. JUSTICE R.SAKTHIVEL

C.M.A. NO. 1515 OF 2022
AND C.M.P. NO. 11241 OF 2022

The Divisional Manager,
National Insurance Company Ltd.,
D.O.110, J.N.Street,
Puducherry – 605 001. ... Appellant / 2nd Respondent

Vs.

1. M.Thamizharasi
W/o. Murugan

2. M.Aravinth @ Aravintharaj
S/o. Murugan

3. Ranganayagi
W/o. Rajavelu

4. K.Manibalan
S/o. Kuppusamy ... Respondents / 1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award dated 23.12.2021 made in M.C.O.P. No. 2076 of 2017 on the file of the Motor Accidents Claims Tribunal (I Additional District & Sessions Judge), Cuddalore.

For Appellant : Mr. D.Bhaskaran

For R1 to R3 : Ms. Ramya V.Rao
For R4 : No Appearance

JUDGMENT

This Civil Miscellaneous Appeal is directed against the Award dated 23.12.2021 made in M.C.O.P. No. 2076 of 2017 on the file of the 'Motor Accidents Claims Tribunal (I Additional District and Sessions Judge), Cuddalore' [henceforth 'Tribunal']. The appellant herein is the 2nd respondent before the Tribunal.

2.For the sake of convenience, the parties will henceforth be referred to as per their array before the Tribunal.

Petitioners' case:-

3.The 1st petitioner is the wife, the 2nd petitioner is the son and the 3rd petitioner is the mother of the deceased - Murugan. The case of the petitioners is that on 02.01.2017 at about 15.00 hours, the deceased - Murugan was riding the 1st respondent's Hero Passion Pro Motorcycle bearing Registration No. TN-31-BD-9299 from East to West, at a moderate speed, keeping extreme left on Kullanchavadi to Alapakkam Road. While approaching Venkatammalpuram Bus Stop, the deceased swerved his vehicle to give way for another vehicle. In this process, the motorcycle unavoidably hit a TVS Super Heavy Duty moped bearing Registration No. TN-31-AA-9351 coming from West to East, leading to an accident in which the deceased - Murugan sustained fatal injuries. He was rushed to Government Head Quarters Hospital, Cuddalore and then treated in Jipmer Hospital, Puducherry. Despite medical treatment, he passed away on 07.01.2017. Before the accident, the deceased was engaged in Tender Coconut Business and thereby, he earned a sum of Rs.3,300/- per month. Accordingly, the petitioners filed claim petition on the basis of no-fault liability under Section 163-A of 'the Motor Vehicles Act, 1988' ('M.V. Act' for short), praying to pass an award for a sum of Rs.15,00,000/- in favour of the petitioners against the respondents and for the award of cost and interest at the rate of 18% per annum from the date of the petition till the date of payment.

1st respondent's case:-

4.The 1st respondent did not choose to contest the Original Petition. Hence, he was called absent and set *exparte* before the Tribunal.

2nd respondent's case:-

5.The 2nd respondent, who is the insurer of the 1st respondent's motorcycle bearing Registration No. TN-31-BD-9299, filed a counter stating that the accident occurred entirely due to the rash and negligent riding of the deceased - Murugan. A First Information Report (FIR) was registered against one Gunasundary, wife of Sekar in Crime No. 5 of 2017 and after investigation, the Police referred and closed the case as 'mistake of fact' in R.C.S. No. 4 of 2017. The deceased - Murugan, being a tortfeasor, is not entitled to claim compensation from the 2nd respondent. Accordingly, the 2nd respondent-Insurance Company prayed to dismiss the original petition.

Witnesses and documents:-

6.At trial, the 1st petitioner was examined as P.W.1 and one Thiru. Selvaraj was examined as P.W.2 and Exs-P.1 to P.8 were marked on the side of the petitioners. Neither any witness was examined, nor any document was marked on the side of the respondents.

Findings of the Tribunal:-

7.The Tribunal found that the case of the petitioners was proved and that the deceased - Murugan died only due to the road accident that occurred on 02.01.2017 at about 15.00 hours. Further that the 1st respondent's vehicle bearing Registration No. TN-31-BD-9299, was insured with the 2nd respondent at the time of accident and hence, the 2nd respondent is liable to pay compensation to the petitioners based on the principle of no-fault liability under Section 163-A of the M.V. Act. Accordingly, the Tribunal awarded a sum of Rs.5,24,800/- as compensation payable to the petitioners by the 2nd respondent.

8.Feeling aggrieved with the said Award of the Tribunal, the 2nd respondent – Insurance Company has preferred this Civil Miscellaneous Appeal.

Arguments:-

9.Mr. D.Bhaskaran, learned Counsel for the appellant submitted that the Tribunal did not properly appreciate the evidence and materials and failed to note that as per the provisions of Section 147 of the M.V. Act, the policy for the vehicle in question does not cover the risks of the deceased rider, as the policy covers only third-party claims. The deceased - Murugan cannot be said to be a third party with respect to the insured vehicle. The Tribunal failed to consider the legal position that deceased - Murugan cannot be both a claimant and a recipient with respect to the claim. The scope of Section 163-A of the MV Act cannot be expanded to cover a borrower of the vehicle who stepped into shoes of the registered owner. Therefore, the claim petition is not maintainable under Section 163-A of M.V. Act.

9.1.He further submitted that the deceased - Murugan was not the registered owner of the vehicle and the insurance policy stands in the name of K.Manibalan - 4th respondent herein. Therefore, the claimants are not entitled to compensation even under the Personal Accident cover. Accordingly, he prayed to allow the Civil Miscellaneous Appeal and dismiss the original petition.

9.2.In support of his submissions, he relied on the following Judgments:-

(i) Judgment of this Court in ***Kaliamoorthy and Others -vs- Velmurugan and another*** in ***C.M.A. No. 504 of 2012 dated 27.08.2020***.

(ii) Judgment of this Court in ***The Oriental Insurance Company Limited -vs- B.Balamurugan and another*** in ***C.M.A. No. 370 of 2015 dated 23.03.2021***.

(iii) Judgment of this Court in ***United India Insurance Company Ltd., -vs- Deepa and other*** in ***C.M.A. No. 936 of 2024 dated 20.06.2024.***

10.In response to the above arguments, Ms. Ramya V.Rao, learned Counsel appearing for the 1st to 3rd respondents submitted that, even while assuming that the petition is not maintainable under Section 163-A of the M.V.Act, Ex.P6 - Policy is a package policy (comprehensive policy) and since the deceased - Murugan stepped into the shoes of the owner of the 1st respondent's vehicle when he borrowed the vehicle, the Insurance Company is liable to pay a sum of Rs.1,00,000/- as per the Personal Accident Cover. Accordingly, she prayed to pass an Award at least for a sum of Rs.1,00,000/- under the Personal Accident Cover.

Discussion and Decision:-

11.This Court has considered the submissions made on either side and perused the materials available on record.

12.Admittedly, the original petition was filed under Section 163-A of M.V. Act. On 02.01.2017 at about 15.00 hours, the deceased was driving the 1st respondent's motorcycle. As he approached Venkatammalpuram Bus Stop, the deceased swerved his vehicle to give way to another vehicle, during which process, his motorcycle unavoidably/accidentally hit the TVS Super Heave Duty moped bearing Registration No. TN-31-AA-9351 coming from the opposite direction. Due to the accident, the deceased - Murugan sustained injuries. Thereafter, despite medical treatment, the deceased - Murugan passed away in the hospital on 07.01.2017. There is no dispute with regard to the above facts.

13.The police registered a case against the rider of the motorcycle bearing Registration No.TN-31-AA-9351. After investigation, the police closed the FIR as 'mistake of fact' in R.C.S. No. 4 of 2017. It is settled position of law that merely because the Police closed the criminal case as 'mistake of fact', there is no bar against establishing that the accident occurred only due to the rash and negligent driving of the opposing vehicle. It is apposite to note that, in this case, the petitioners miserably failed to implead the owner and rider of the opponent vehicle. There is no reason assigned for not impleading them.

14.In this case, Thiru.Selvaraj was examined as P.W.2 to prove the manner of the accident. He deposed that on 02.01.2017 at about 3.00p.m. while he was standing on the mud road near Venkatammalpuram Bus Stop, a rider riding Hero Passion Pro motorcycle bearing Registration No. TN-31-BD-9299 came from East to West and at the same time, a rider of a motorcycle bearing Registration No. TN-31-AA-9351 came from West to East. The rider of the Hero Passion Pro Motorcycle unexpectedly dashed against the motorcycle that was coming from the opposite direction. After the accident, he came to know the deceased - Murugan was the rider of the motorcycle.

15.Admittedly, the owner of the opposite vehicle was not added as a party. At the time of accident, the deceased - Murugan was riding the motorcycle borrowed from the 1st respondent which was insured with the 2nd respondent. Hence, as per law, the deceased - Murugan steps into shoes of the owner (1st respondent). The Question here is whether the deceased who stepped into the shoes of the owner, is entitled to claim compensation under Section 163-A of the M.V. Act.

16.This issue is no more *res integra*. The Hon'ble Apex Court in its Judgment in ***Ramkhiladi's case*** **[***Ramkhiladi and another -vs- United India Insurance Co. Ltd., and another* reported in *2020 ACJ 627*] has dealt with the matter.

16.1.The facts of the ***Ramkhiladi's case*** has been narrated in Paragraph No. 2.1 of the Judgment therein as follows:-

> *"2.1.That in a vehicular accident which occurred on 2-10-2006, one Chotelal alias Shivram died. The deceased was travelling on motorcycle bearing Registration No. RJ 02 SA 7811. At this stage, it is required to be noted that, even as per the claimants, the accident occurred on account of rash and negligent driving of the driver of another motorcycle bearing Registration No. RJ 29 2M 9223. That the appellants herein filed a claim petition before the Motor Accidents Claims Tribunal, Laxmangarh (Alwar), Rajasthan (hereinafter referred to as "the learned Tribunal") under Section 163-A of the Motor Vehicles Act (hereinafter referred to as "the Act"). At this stage, it is*

required to be noted that the claim petition was preferred only against the owner of the motorcycle bearing Registration No. RJ 02 SA 7811 and its insurance company. Neither the driver nor the owner or the insurance company of the vehicle bearing Registration No. RJ 29 2M 9223 were joined as opponents in the claim petition. Therefore, as such, no claim petition was filed against the driver, owner and the insurance company of the vehicle involved in the accident i.e. motorcycle bearing Registration No. RJ 29 2M 9223. That an objection was raised by the respondent-insurance company, insurer of motorcycle bearing Registration No. RJ 02 SA 7811 that as according to the claimants and even so stated in the FIR, the driver of the motorcycle bearing Registration No. RJ 29 2M 9223 was rash and negligent and the claimants have not filed the claim petition against the owner of the said vehicle, the claim petition is required to be dismissed against the insurance company of the motorcycle bearing Registration No. RJ 02 SA 7811."

16.2.The Hon'ble Apex Court in Paragraph No.5 has framed a question as follows:-

"The short question which is posed for consideration of this Court is whether, in the facts and circumstances of the case and in a case where the driver, owner and the insurance company of another vehicle involved in an accident and whose driver was negligent are not joined as parties to the claim petition, meaning thereby that no claim petition is filed against them and the claim petition is filed only against the owner and the insurance company of another vehicle which was driven by

the deceased himself and the deceased being in the shoes of the owner of the vehicle driven by himself, whether the insurance company of the vehicle driven by the deceased himself would be liable to pay the compensation under Section 163-A of the Act? Whether the deceased not being a third party to Vehicle No. RJ 02 SA 7811 being in the shoes of the owner can maintain the claim under Section 163-A of the Act from the owner of the said vehicle?"

16.3.The Hon'ble Apex Court has answered the above-extracted question, in Paragraph No.5.9 as follows:-

"Now, so far as the submission made on behalf of the claimants that in a claim under Section 163-A of the Act mere use of the vehicle is enough and despite the compensation claimed by the heirs of the owner of the motorcycle which was involved in the accident resulting in his death, the claim under Section 163-A of the Act would be maintainable is concerned, in view of the decision of this Court in Rajni Devi [Oriental Insurance Co. Ltd. v. Rajni Devi, (2008) 5 SCC 736 : (2008) 3 SCC (Cri) 67] , the aforesaid cannot be accepted. In Rajni Devi [Oriental Insurance Co. Ltd. v. Rajni Devi, (2008) 5 SCC 736 : (2008) 3 SCC (Cri) 67] , it has been specifically observed and held that the provisions of Section 163-A of the Act cannot be said to have any application with regard to an accident wherein the owner of the motor vehicle himself is involved. After considering the decisions of this Court in Oriental Insurance Co. Ltd. v. Jhuma Saha [Oriental Insurance Co. Ltd. v. Jhuma Saha, (2007) 9 SCC 263 : (2007) 3 SCC (Cri) 443] ; Dhanraj [Dhanraj v. New India Assurance Co. Ltd., (2004) 8 SCC 553 : 2005 SCC (Cri) 363] ;

National Insurance Co. Ltd. v. Laxmi Narain Dhut [National Insurance Co. Ltd. v. Laxmi Narain Dhut, (2007) 3 SCC 700 : (2007) 2 SCC (Cri) 142] and Premkumari v. Prahlad Dev [Premkumari v. Prahlad Dev, (2008) 3 SCC 193 : (2008) 1 SCC (Civ) 822 : (2008) 1 SCC (Cri) 694] , it is ultimately concluded by this Court that the liability under Section 163-A of the Act is on the owner of the vehicle as a person cannot be both, a claimant as also a recipient and, therefore, the heirs of the owner could not have maintained the claim in terms of Section 163-A of the Act. It is further observed that, for the said purpose, only the terms of the contract of insurance could be taken recourse to. In the recent decision of this Court in Ashalata Bhowmik [National Insurance Co. Ltd. v. Ashalata Bhowmik, (2018) 9 SCC 801 : (2018) 4 SCC (Civ) 595 : (2019) 1 SCC (Cri) 399] , it is specifically held by this Court that the parties shall be governed by the terms and conditions of the contract of insurance. Therefore, as per the contract of insurance, the insurance company shall be liable to pay the compensation to a third party and not to the owner, except to the extent of Rs 1 lakh as observed hereinabove."

17.***Ramkhiladi's case* (*supra*)** has been followed by this Court in,

(i)*United India Insurance Company Ltd., -vs- Deepa and others* in *C.M.A. No. 936 of 2024* dated 20.06.2024;

(ii)*The Branch Manager, The Oriental Insurance Co. Ltd., -vs- R.Jothi and another* in *C.M.A. No. 3053* *of 2017* dated 26.04.2022;

(iii)*The Oriental Insurance Company Limited -vs- B.Balamurugan* in *C.M.A. No. 370 of 2015* dated 23.03.2021; and

(iv)*Kaliamoorthy and Others -vs- Velmurugan and another* in *C.M.A. No. 504 of 2012* dated 27.08.2020.

18.In view of the above legal position, the claimants are not entitled to claim compensation against the owner of the borrowed vehicle under Section 163-A of M.V. Act, since the deceased - Murugan as a borrower of the vehicle, steps into the shoes of the owner (1st respondent) and hence, not a third party.

19.That question being answered, the next question is whether the claimants are entitled to compensation under Personal Accident Coverage as per the terms of the Insurance Policy.

20.In this regard, it is apposite to cite the judgment of this Court in ***National Insurance Company Ltd., Vs. Rani and Others [CMA No.1848 of 2017 decided on 12.03.2020]*** wherein it has been held as follows:

"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:- (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 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.*

21.At this juncture, it is apposite to cite the Judgment of the Hon'ble Division Bench of this Court in ***Shanmugam's case*** [*M/s. Tata AIG general, Insurace Company Limited -vs- Shanmugam*] in ***C.M.A. No. 1395 of 2021*** dated 19.08.2024 wherein, in Paragraph No. 25, it has held as follows:-

"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."

22.This Court has perused the Ex-P.6 / Photocopy of the Insurance Policy which is a comprehensive policy issued by the 2nd respondent for the 1st respondent's vehicle. Admittedly, the premium for the compulsory personal accident cover for the owner-driver under Ex.P6-Policy had been paid. However, under Ex.P6, no premium for the optional personal accident cover of unnamed passenger or unnamed drivers was paid. In these circumstances, on the strength of ***Shanmugam's case,*** this Court is of the considered view that the petitioners are not entitled to claim benefits under the personal accident coverage.

Conclusion:-

23.In view of the above-discussed legal position, this Court is inclined to allow the Civil Miscellaneous Appeal. Accordingly, the Civil Miscellaneous Appeal is allowed by setting aside the Award dated 23.12.2021 in M.C.O.P. No. 2076 of 2017 on the file of the Motor Accidents Claims Tribunal (I Additional District & Sessions Judge), Cuddalore. If any amount has been deposited by the appellant, the same is permitted to be withdrawn. No costs. Connected C.M.P is closed.

29 . 08 . 2024

Index : Yes
Speaking Order : Yes
NCC : Yes

PAL/TK

R.SAKTHIVEL, J.

PAL/TK

To

The Motor Accidents Claims Tribunal
(I Additional District & Sessions Judge),
Cuddalore.

PRE-DELIVERY JUDGMENT MADE IN

C.M.A.NO.1515 OF 2022

29 . 08 . 2024