



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.06.2024

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THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

CMA No.1185 of 2024

1.C.Janaki

2.C.Prakash (Minor) rep. by her mother Janaki

3.C.Santhosh Kumar (Minor) rep. by her mother Janaki

4.C.Sowmiya (Minor) rep. by her mother Janaki

5.Balaraman

6.R.Mohanan

..Appellants

.vs.

1.K.Kanniyappan

2.IFFCO Tokio General Insurance Company Ltd.,
New No.28, 2nd Floor, North Usman Road,
T.Nagar, Chennai - 600 017.

..Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the judgment and decree dated 24.09.2018 made in MCOP No.902 of 2012 on the file of the Motor Accident Claims Tribunal, (VI Small Causes Court), Chennai.

For Appellants : Mr.K.Varadhakamaraj

For Respondents : Mr.J.Michael Visuvasam for R2



JUDGMENT

The instant appeal has been filed by the claimants whose claim petition came to be rejected under Section 163A of the Motor Vehicles Act, (herein after called as “Act”) and the claimants were granted compensation only under Section 140 of the Act to the tune of Rs.50,000/-

2.The claimants who are the wife and the children of the deceased Chandran filed the claim petition before the Tribunal on the ground that on 10.07.2011, when the deceased was riding his two wheeler towards Chengalpattu and at about 22:40 hours near Thirukazhukundram Road, an Auto was driven in a rash and negligent manner and it dashed against the two wheeler and thereby, the deceased sustained fatal injuries and he succumbed to the injuries. It is under these circumstances, the claimants filed the claim petition under Section 163A of the Act seeking for payment of compensation from the 2nd respondent Insurance Company in which the auto was insured.

3.The Tribunal on considering the facts and circumstances of the case and on appreciation of oral and documentary evidence, came to a conclusion that the accident had occurred only due to the rash and negligent driving on the part of the deceased. The Tribunal further held that even though the claim petition has been filed under Section 163A of the Act, a tortfeasor cannot be granted compensation even



under this provision. The Tribunal thereafter proceeded to invoke Section 140 of the Act and fixed the compensation of Rs.50,000/- Aggrieved by the Award passed by the Tribunal, the claimants have filed the present appeal before this Court.

4.Heard Mr.K.Varadhakamaraj, learned counsel appearing on behalf of the appellant and Mr.J.Michael Visuvasam, learned counsel appearing on behalf of the 2nd respondent.

5.This Court has carefully considered the submissions made on either side and also the materials available on record.

6.The crux of the arguments that was canvassed before this Court was that when a claim petition is filed under Section 163A of the Act, the issue of proving negligence becomes irrelevant and in the instant case, there is no dispute that the accident had taken place due to the collision between the auto rickshaw and the two wheeler and that fact by itself will be enough for the claimants to seek for compensation under Section 163A of the Act. To substantiate the submission, the judgment of this Court in ***Lakshmi and others vs. Metropolitan Transport Corporation Limited, Chennai-2*** reported in ***2011 1 TN MAC 410*** was relied upon. The learned counsel also made his submission on the scope of Section 163A of the Act.



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7. The learned counsel for the Insurance Company submitted that the Tribunal has come to a categorical conclusion that the deceased in this case was the tortfeasor and therefore, a person who has committed a wrong cannot be permitted to take advantage of his own wrong and Section 163A of the Act should not be applied in cases of this nature. The learned counsel submitted that the Tribunal had properly appreciated the facts of the case and has rightly come to a conclusion that the claimants will not be entitled for the payment of compensation under Section 163A of the Act and that the Award is not liable to be interfered by this Court.

8. The compensation payable under Section 163A of the Act is in a way an alternative to the determination of the compensation on the principle of fault liability. The object underlying the amendment that was brought into force in the year 1994 is to pay compensation without their being a long drawn litigation on the structured formulae basis and the legislature thought it fit to evolve a procedure of paying compensation without entering into the process of determining the fault.

9. The victim of an accident or his dependants have an option either to proceed under Section 166 of the Act or under Section 163A of the Act. If the victim or his dependants proceed under Section 163A of the Act, the compensation will be awarded in terms of the II Schedule without calling upon the victim or the dependants



to establish any negligence or default on the part of the owner of the vehicle or the driver of the vehicle.

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10. Section 163A(2) of the Act provides that the claimant shall not be required to plead or establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act or neglect or default of the owner of the vehicle concerned.

11. The moot question for consideration is as to whether a tortfeasor can take advantage of the provision under Section 163A of the Act and seek for payment of compensation by disregarding the tortious act committed by him. The attempt made by the learned counsel for the appellants to expand the scope of Section 163A of the Act to such an extent, defeats the very purpose for which such an amendment was brought-forth by the legislature. The legislature never had in its mind a tortfeasor making use of the beneficial legislation brought-forth under Section 163A of the Act. A fair reading of Section 163A of the Act brings-forth an understanding that where an accident had taken place and the victim or the dependants did not want to go into the issue of negligence, they are given an avenue to choose Section 163A where the victim or the dependants are not required to plead or establish negligence and they will be entitled for the compensation in accordance with the II Schedule.



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12.The judgment that has been relied upon by the learned counsel for the appellant can be differentiated on the facts of that case. In that case, a student who was studying in the 9th standard was travelling in the foot-board of a bus belonging to the Transport Corporation and as a result, he fell down from the bus and he was run over by the bus. He succumbed to the injuries. This Court held that there was contributory negligence on the part of the foot board traveller and even though such contributory negligence was attributable to the foot-board traveller, this Court was inclined to invoke Section 163A of the Act and grant compensation to the tune of 50%.

13.In the case in hand, the Tribunal on appreciation of the oral and documentary evidence came to a categoric conclusion that the deceased in this case was a tortfeasor. The Tribunal took into consideration the FIR that was marked as Ex.P1 which was registered as against the deceased for the alleged offence under Sections 279 and 337 of IPC. It was stated that the deceased was riding the vehicle in a rash and negligent manner under the influence of alcohol. The Tribunal also took into consideration the Post-mortem Certificate which was marked as Ex.P2 in which it was mentioned that the deceased's stomach contained brown coloured liquid during autopsy which ascertains the fact mentioned in the FIR that the deceased was under the influence of alcohol at the time of accident. The evidence of PW1 was not taken into consideration, since PW1 was not an eye-witness to the incident. There was no contra-evidence available to disprove the fact that the deceased was not the tortfeasor



in this case.

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14. In the above circumstances, the Tribunal went into the scope of Section 163A of the Act and also took into consideration certain reported judgments. The Tribunal came to a conclusion that Section 163A of the Act cannot go to the aid of a tortfeasor or the dependants of a tortfeasor. In other words, the Tribunal held that a person cannot take advantage of his own wrong and seek for a compensation under Section 163A of the Act.

15. Let me take a hypothetical case where a similar accident had occurred where a two wheeler and an auto had collided with each other and the two wheeler rider died due to the accident. If on such accident, there was absolutely nothing to show that the two wheeler rider was the tortfeasor and at the same time, the negligence of the auto driver is also not able to be established, those are cases where Section 163A of the Act will come into play. In such a scenario, it will not be necessary for the dependants to plead or establish the negligence on the part of the auto driver and it will suffice if they are able to establish that the accident had taken place due to the collision between the two wheeler and the auto rickshaw. Therefore, the reason for bringing in Section 163A of the Act is only to ensure that in a given case where negligence is difficult to be established and there were no materials specifically pointing out on whose side the negligence lies, the legislature thought that in such a case, the victim or his dependants should not be deprived of compensation and that compensation must be paid without insisting for establishing



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negligence as provided under the II Schedule. This welfare legislation can never be taken advantage by a person who himself is a tortfeasor in a case. If this is allowed, it will tantamount to a person taking advantage of his own wrong and is also compensated for committing such a wrong. My mind is redolent with the latin maxim *Nullus Commodum Capere Potest de Injuria sua Propria* (No one can take advantage or benefit from a wrong committed by himself)

16. In all cases, where the negligence is upon the person who is claiming himself to be a victim and he happens to be the tortfeasor in the case, he or his dependants cannot take advantage of Section 163A of the act. Such interpretation will defeat the purpose for which Section 163A was brought into the Act.

17. In the light of the above discussion, this Court does not find any ground to interfere with the Award passed by the Tribunal and accordingly, the same is dismissed. No Costs.

12.06.2024

Index : Yes/No
Speaking Order/Non-Speaking Order
Neutral citation : Yes/No
SSR

To



The Motor Accident Claims Tribunal, (VI Small Causes Court), Chennai.

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N. ANAND VENKATESH., J

ssr

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