

IN THE HIGH COURT OF JUDICATUE AT MADRAS

DATED: 27.09.2016

CORAM

THE HONOURABLE MR. JUSTICE T.RAJA

C.M.A.Nos.3655 and 3681 of 2014

The Managing Director,  
Tamil Nadu State Transport Corporation  
(Villupuram) Limited,  
No.3/137, Salamedu,  
Vazhuthareddy,  
Villupuram - 605 602.

... Appellant/Respondent  
in both appeals

Vs

S.James

... Respondent/Claimant  
in CMA No.3655/2014(4793/09)

1.Mary Sornam  
2.Minor S.Arockia Emy Jesilin  
3.S.Reselin  
4.A.Santhanaraj  
5.Minor S.Paul Shalini  
(R2 & 5 rep by guardian  
& next friend S.Mary Sornam)

... Respondents/Claimants  
in CMA No.3681/2014(4792/09)

Common Prayer: These Appeals are filed under Section 173 of the Motor Vehicles Act, 1988, against the common decree and judgment dated 10.01.2014, made in MCOP.Nos.4793 of 2009, and 4792/09 on the file of the Motor Accident Claims Tribunal, Chief Small Causes Judge, Chennai.

For Appellant in both appeals : Mr.K.J.Sivakumar

COMMON JUDGMENT

These appeals are filed by the appellant Transport Corporation against the common award passed by the Motor Accidents Claims Tribunal in claim petitions filed by the claimants under Section 163A of the Motor Vehicles Act (in short "the Act").

2. On 07.04.2008 at about 1.15 a.m., while the deceased Stalin in MCOP No.4792 of 2009 was driving the load auto bearing Registration No.TN-04-AA-5812, along with one Mr.James/claimant

in MCOP.No.4793 of 2009 as load man, near Thenbathur, Tindivanam, a bus belonging to the appellant Transportation bearing Registration No.TN-32-N-2672 driven by its driver in a rash and negligent manner, dashed against the load auto. Due to the said accident, the deceased Stalin in MCOP No.4792 of 2009 sustained fatal injuries and succumbed to the injuries in the hospital on 10.04.2008. The claimant in MCOP.No.4793 of 2009 / load man sustained grievous injuries in all over his body and thereafter, he filed a claim petition claiming a sum of Rs.6,00,000/- as compensation. In MCOP.No.4792 of 2009, the claimants are the wife, children, father and mother and they have filed a claim petition claiming a sum of Rs.8,00,000/- as compensation.

3. After considering the oral and documentary evidence, the Tribunal held that the accident had occurred only due to the rash and negligent driving of the driver of the bus belonging to the appellant Transport Corporation and awarded a sum of Rs.4,62,834/- with interest at 7.5% per annum in MCOP.No.4792 of 2009 and Rs.70,000/- with interest at 7.5% per annum in MCOP.No.4793 of 2009.

4. Learned counsel appearing for the appellant Transport Corporation submitted that the Tribunal has failed to take note of the fact that the accident had occurred only due to the rash and negligent driving of the driver of the load auto, who came in the opposite direction and dashed against the front side of the bus and after the accident, a case was also registered against the driver of the load auto in Crime No.170 of 2008 on the file of the Mayilam Police Station. It is further submitted that the Tribunal has ignored the deposition of R.W.1/driver of the bus, who came to the witness box and deposed that the accident had occurred due to the carelessness of the driver/deceased of the load auto. It is also his further submission that the common award passed by the Tribunal is liable to be quashed for non-joinder of the necessary party, since the claimants have not impleaded the owner and the Insurance Company of the Load Auto. Thus, with these submissions, he prayed for quashing the impugned common award on the ground of liability.

5. I do not find any merit on the above said submissions, for, it is settled law as per the judgment of the Hon'ble Apex Court in Deepal Girishbhai Soni and others v. United India Insurance Co. Ltd., Baroda [(2004) 5 SCC 385] that fault of the driver of the offending vehicle need not be proved and that in view of Section 163-B of the Act, an option had been provided to enable the claimants to claim compensation either under Section 140 or Section 163-A of the Act. Therefore, the contention of the appellant that since the accident had occurred

only due to the rash and negligent driving of the driver of the bus and that FIR was also filed against the driver of the load auto, the claimants are not entitled to claim any compensation, cannot be sustained.

6. Further, given the facts and circumstances of the case, it is relevant to refer to the Section 163-A of the Act and the same is extracted below:

"163-A. Special provisions as to payment of compensation on structured- formula basis.

- (1) Notwithstanding anything contained in this Act or in any other law for the time being in force or instrument having the force of law, the owner of the motor vehicle or the authorised insurer shall be liable to pay in the case of death or permanent disablement due to accident arising out of the use of motor vehicle, compensation, as indicated in the Second Schedule, to the legal heirs or the victim, as the case may be.

Explanation. - For the purposes of this sub-section, 'permanent disability' shall have the same meaning and extent as in the Workmen's Compensation Act, 1923 (8 of 1923).

(2) In any claim for compensation under sub-section (1), 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 or vehicles concerned or of any other person.

(3) The Central Government may, keeping in view the cost of living by notification in the Official Gazette, from time to time amend the Second Schedule."

A bare reading of the above said provision shows that under Section 163-A of the Act, the claimant shall not be required to plead or establish that the death or permanent disablement, in respect of which claim has been made, was due to any wrongful act, neglect or default of the deceased or injured, as the case may be, and in other words, the claim under Section 163-A shall not be defeated by the Transport Corporation or the owner of the vehicle, as the case may be, by reason of any wrongful act, neglect or default of the person in respect of whose death or permanent disablement claim has been made. Thus, this Court is of the view that liability to make compensation under Section 163-A is on the principle of no fault and therefore, the question as to who is at fault is immaterial and foreign to an

enquiry under Section 163-A of the Act, which does not make any provision for apportionment of the liability, therefore, the contention of the learned counsel for the appellant Transport Corporation that the driver of the load auto/deceased is held responsible for the accident and therefore, they are not liable to pay the compensation to the claimants cannot be acceded by this Court, for, if the owner of the vehicle or the Transport Corporation is permitted to prove contributory negligence or default or wrongful act on the part of the claimant, naturally it would defeat the very object and purpose of Section 163-A of the Act. Once it is established that the death or permanent disablement occurred due to the accident arising out of the user of the motor vehicle, the Transport Corporation or the owner is liable to pay the compensation under Section 163-A of the Act. Thus, the appellant Transport Corporation has no locus-standi to say that they are not liable to pay the compensation.

7. As regards to the quantum of compensation, it is settled law that once a claim is made under Section 163-A of the Act, the Tribunal has to follow the statutorily provided formula as stipulated in the second schedule for awarding compensation. In the case on hand, by following the second schedule, the Tribunal has awarded a sum of Rs.4,62,834/- in MCOP.No.4792 of 2009 for the death of one Stalin, aged about 30 years at the time of accident, which, in my view, is in fine tune with the Section 163-A read with second schedule. Likewise, in MCOP.No.4793 of 2009 for the injuries sustained by the claimant, the Tribunal has awarded a sum of Rs.70,000/-, as he suffered 50% of disability as could be seen from the Ex.P10/disability certificate submitted by the doctor/P.W.2.

8. Thus, in my view, the Tribunal has calculated compensation strictly as per the structured formula as mandated by the legislative provision of Section 163-A read with second schedule. Hence, this Court is unable to find any reason to interfere with the impugned award. Accordingly, the Civil Miscellaneous Appeals fail and they are dismissed.

9. With regard to MCOP.No.4792 of 2009, the appellant-Transport Corporation is directed to deposit the entire award amount as awarded by the Tribunal, along with the interest at 7.5% from the date of petition till the date of realization to the credit of MCOP No.4792 of 2009, on the file of the Motor Accidents Claims Tribunal, Chief Small Causes Judge, Chennai, less the amount already deposited if any, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit, the claimants 1, 3 and 4 are entitled to withdraw their respective share amount as apportioned by the Tribunal, by moving necessary application before the Tribunal. In respect of the minors' shares i.e. claimants 2 and 5, it is

made clear that the same shall continue to be in the deposit in any nationalized bank till they attain the majority. The first claimant is also permitted to withdraw the interest accrued in the deposit of the minors' shares once in three months on making proper application.

10. In respect of MCOP.No.4793 of 2009, the appellant-Transport Corporation is directed to deposit the entire award amount as awarded by the Tribunal along with interest at 7.5% per annum from the date of claim petition till the date of realization, less the amount already deposited if any, to the credit of M.C.O.P.No.4793 of 2009, on the file of the Motor Accidents Claims Tribunal, Chief Small Causes Judge, Chennai, within a period of four weeks from the date of receipt of a copy of this judgment. No Costs.

Sd/-  
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

rkm

To

1.The Chief Judge,  
The Motor Accident Claims Tribunal,  
Small Causes Court, Chennai,

+1cc to Mr.K.J.Sivakumsr, Advocate Sr.55974

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srg 27/12/2016

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