

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.08.2017

CORAM:

THE HONOURABLE MR.JUSTICE N.SESHASAYEE

C.M.A.No.2915 of 2013

1.N.Karupayee

2. N.Thavamani

3. N.Senthil

4. N.Lakshmi

5.N.Prabakari

... Appellants/Petitioners

Vs.

1. T.Padmanaban

2. M/s.United India Insurance Company Limited,
Divisional Office,
No.2, Dr.Sankara Road, Namakkal.

... Respondents/Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the judgment and decree dated 31.10.2011 and made in M.C.O.P.No.40 of 2005 on the file of the Motor Accident Claims Tribunal, Principal District Court, Namakkal.

For Appellants : Mr.Ma.P.Thangavel

For Respondents : Mr.N.Vijayaraghavan [For R2]
No Appearance For R1

WEB COPY
JUDGMENT

This appeal has been filed by the claimants who are widow and children of deceased Mr.Natesan, who was aged 52 years, for his death claiming Rs.5,00,000/- as compensation. The claim filed in respect of accident dated 7.10.2004 involving two wheeler TN28 H 8940 on which Natesan was travelling as a pillion rider and with rider and another pillion rider also on the same vehicle. According to them, they were hit by the tractor TN28 K

5553 owned by the first respondent and insured with the second respondent.

2. However, on consideration of the evidence, it was concluded by the Tribunal that fault, if any, was on the part of the rider of two wheeler TN28 H 8490 which hit a milestone on the road and then hit the parked tractor on the kerb of the road. Further, the two wheeler was carrying two pillion riders as against permitting seating capacity of one only and there was no proof that the rider of the two wheeler had a valid driving licence.

3. Though the FIR-Ext.P1 was against the tractor driver, it was established that the driver of the tractor was acquitted Vide Ext.R3, criminal Court judgment marked by the insurance company. Apart from this, the Tribunal was satisfied that there was and could be no fault on the part of the tractor driver and the claim, if at all, ought to have been pursued against the two wheeler TN28 H 8490 alone. Accordingly, the petition was dismissed by orders dated 31.10.2011.

4. It is against this order that the claimants have filed the appeal. The claimants were not able to challenge the finding on negligence with any conviction. However, the counsel urged that even if the claim was not tenable under Section 166 of the Motor Vehicle Act, 1988, by proving negligence against the tractor driver, still the claim could have been treated as one filed under Section 163-A of Motor Vehicles Act, 1988 and compensation assessed. Though the claimants had pleaded that victim was earning Rs.5,000/- p.m. as Document Writer, they were ready and willing to restrict the income to Rs.40,000/- p.a., the limit as per Section 163-A of the Act.

5. The counsel for insurance company was not able to challenge this request because Section 163-A is also based on no fault principle. This is not a case where the victim was riding the two wheeler or found to be at fault. If so, the claimants of the deceased pillion rider could legitimately pursue the claim against the respondents herein as owner and insurer of tractor TN28 K 5553. This Court is inclined to accept the contention of the claimants' counsel and convert the claim as if filed under Section 163-A.

6. Accordingly, this Court is of the view that the widow and children may be entitled for such compensation payable under Section 163-A of M.V.Act, 1988 fixing the income at Rs.40,000/- p.a. maximum permissible and award as per Second Schedule against the respondents 1 and 2, since there is no requirement to establish negligence on the driver of the tractor.

7.This claim is now therefore being treated as one filed under Section 163-A, being beneficial legislation, to protect the interest of the claimants and as such dismissal of the claim in totto is held to be wrong.

8.While so, as per Section 163-A - Second Schedule, the compensation Rs.4,40,000/- less 1/3 plus Rs.2,000/- towards funeral expenses, Rs.5,000/- towards loss of consortium and Rs.2,500/- towards loss of estate of deceased.

9. The just compensation would thus work out to Rs.2,93,333/- plus Rs.9,500/- = Rs.3,02,833/- rounded off to Rs.3,03,000/- in all.

10. This Court therefore is allowing the appeal by construing the claim as if under Section 163-A and awarding Rs.3,03,000/- in all as just compensation with interest at 7.5% p.a. on and from 25.01.2005 till date of payment by the second respondent insurer for and on behalf of the first respondent. The claimants shall have equal share in the ultimate compensation fixed by this Court. The insurer shall satisfy this award within four weeks from the date of receipt of the order copy. The appeal shall stand allowed in part. There shall be no orders as to costs in the appeal.

Sd/-

Assistant Registrar (CS VI)

//True copy//

Sub Assistant Registrar

ds

To:

1. The Principal District Court,
Namakkal.

2. The Section Officer,
V.R.Section, High Court, Madras.

+1cc to Mr.Ma.P.Thangavel, Advocate SR.No.55513

C.M.A.No.2915 of 2013

GP (CO)
GN (26/03/2018)