



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 17.11.2017

WEB COPY

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.M.A. (MD) No.968 of 2016

and

CMP (MD) Nos.8693 and 8740 of 2016

The Branch Manager,
New India Assurance Compaby,
No.18, Arkad Road, Perur
Chennai

... Appellant

Vs.

1.Natarajan
2.Pappa
3.Kalaivani
4.Annaselvi
5.Sudha
6.Sankar

(R3 and R4 are dismissed by the Tribunal,
So, notice is not necessary to them).

... Respondents

Prayer : This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988 to set aside the judgment and decree dated 23.02.2014 made in M.C.O.P.No.41 of 2013 on the file of Motor Accidents Claims Tribunal, (Subordinate Judge), Ambasamudram.

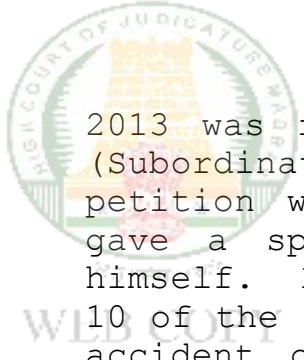
For Appellant : Mr.G.Prabhu Rajadurai

For Respondent : Mr.S.Thesigan for RR1 to 5
R6 - unclaimed

JUDGMENT

The insurance company has filed this appeal questioning the impugned award on the ground of liability.

2.One Pitchumani, who is the son of claimants 1 and 2 and brother of claimants 3 to 5 borrowed the motorcycle belonging to one Sankar and insured with the appellant and rode the same in Alanthur Subway. He hit the road divider, fell on the road and suffered head injuries and died on the spot. M.C.O.P.No.41 of



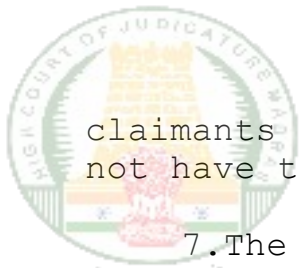
2013 was filed on the file of Motor Accidents Claims Tribunal, (Subordinate Judge), Ambasamudram seeking compensation. The said petition was filed under Section 166 of M.V.Act. The Tribunal gave a specific finding that the deceased was the tortfeasor himself. He had invited the accident by his own conduct. In para 10 of the impugned order, it has been categorically found that the accident occurred due to the own fault of the deceased. The claimants have not filed any cross objection questioning the said finding rendered by the Tribunal. The said finding has become fine.

3.It is seen that the Tribunal after giving such a finding chose to convert the petition filed under Section 166 of M.V.Act, to one under Section 163 A of the Act. In other words, after holding that the original petition filed under Section 166 of the Act is not maintainable, the Tribunal converted the same and awarded compensation to the extent of Rs.4,79,700/- with interest.

4.The power of the Tribunal to convert the petition filed under Section 166 of the M.V.Act to one under Section 163 A of M.V.Act cannot be doubted. But, the said conversion must be made before the conclusion of the enquiry under Section 166 of M.V.Act. The three Judges Bench of the Hon'ble Supreme Court of India in the decision reported in **2004 ACJ 934 - Deepal Grisihbhai Soni V. United India Insurance Co. Ltd.**, specifically held that if the Tribunal comes to the conclusion that no case has been made out for awarding compensation under Section 166 of the Act, it would not be at liberty to award compensation in terms of Section 163 A of the Act thereafter.

5.The very same three Judges Bench also held that Section 163 A of the Act covers cases where even negligence is on the part of the victim. Therefore, the appellant insurance company could not have adduced evidence to defeat the claim by establishing negligence on the part of the deceased. But, in the present case, the claimants have taken a specific plea in the petition that the deceased was an Engineer in GGS Information Services India Pvt. Ltd., and getting a salary of Rs.29,437/- p.m.

6.To maintain a petition under Section 163 A of the Act, the annual income of the deceased should be Rs.40,000/- or less. Even though the case reported in **(2001) 5 SCC 175 - Oriental Insurance Co. Ltd., Vs. Hansrajbhai V. Kodala**, the Hon'ble Supreme Court held that the benefit under Section 163 A of the Act can be availed of by the claimant by restricting the claim on the basis of income at a sum of Rs.40,000/-, in **2004 ACJ 934**, the Hon'ble three Judges Bench of the Supreme Court held in para 67 that the proceedings under Section 163 A of the Act being a social security provision, only those whose annual income is upto Rs.40,000/- can take the benefit thereof. Therefore, it is obvious that the



claimants fall outside the purview of the said provision and could not have taken the benefit thereunder.

7.The Tribunal clearly erred in awarding compensation under Section 163 A of the Act. The error committed by the Tribunal is two fold. It converted the proceedings from one provision to another at the end of the enquiry i.e. at the time of writing the judgment. Such an approach was clearly forbidden by the Hon'ble Supreme Court. Secondly, the claimants did not fall within the eligible income group. On both grounds, the Tribunal erred. I am therefore constrained to set aside the award dated 23.02.2014 made in M.C.O.P.No.41 of 2013 on the file of Motor Accidents Claims Tribunal, (Subordinate Judge), Ambasamudram. Accordingly, the same is set aside.

8.It is submitted by the learned counsel for the appellants that already entire compensation amount has been deposited by the appellant insurance company. The insurance company is at liberty to withdraw the entire amount with accrued interest.

9.This civil miscellaneous appeal stands allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(AD-II)

/True Copy/

Sub Assistant Registrar

To

1. The Motor Accidents Claims Tribunal, (Subordinate Judge),
Ambasamudram.

2. The Record Keeper,
Madurai Bench of Madras High Court, Madurai.

+ 1 cc TO Mr.G.Prabhu Rajadurai , Advocate in SR No. 88093

Arul

AE/MR KKR/SAR1/12.12.2017/3P/4C

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