IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON 15.11.2018

DELIVERED ON 20.11.2018

CORAM:

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

CMA.No.304 of 2011

The Divisional Manager,
The New India Assurance Company Limited,
No.42, Big Street, 2nd floor, Divisional Office,
Vasavi Complex, Tiruvannamalai. ... Appellant / 2nd Respondent

Vs.

1. Latha

2. Minor Pratheepa

3. Minor Divya
[Minors R2 and R3 represented by their mother and guardian Latha (R1)]

4. Aravind
(4th respondent declared as major and his mother Latha (R1) discharged from the guardianship vide court order dated 16.07.2018 made in M.P.No.1 of 2012 in CMA No.304/2011. ...Respondent 1 to 4/ Respondent 1 to 4

5. K.Balakrishna Reddy ...5th Respondent / 1st Respondent.

This Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988, against the quantum of compensation awarded in M.C.O.P.No.23 of 2007 dated 30.07.2010 on the file of the Additional Subordinate Judge, Motor Accidents Claims Tribunal, Tindivanam.

For Appellant : Mr.M.Krishnamoorthy

For Respondents : Ms.J.Prithivi for Mr.S.Kaithamalai Kumaran

सत्यमेव जयते
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J U D G M E N T

The Divisional Manager, The New India Assurance Company Limited, Divisional Office, Thiruvannamalai has filed the present appeal under Section 173 of the Motor Vehicles Act 1988 against the award dated 30.07.2010 passed by the Additional Subordinate Judge, Motor Vehicle Accidents Claim Tribunal, Tindivanam in MCOP No.23 of 2007.

2. On 18.06.2006, the deceased Anandan was driving Ashok Leyland Tanker Lorry bearing registration No. TN 32 Y 0099 on Aruppukottai-Tuticorin National Highways after loading granite stones in the lorry. When the deceased was nearing Sethurajapuram, the right side front tyre of the lorry burst, as a result of which, he lost control over his vehicle. The granite stones rolled over the cabin and the deceased died inside the cabin.

3. The Tribunal held that the owner of the lorry was responsible for the accident, as he did not maintain the lorry properly. It is further held that since the owner of the lorry has insured his vehicle with the present appellant, both of them are jointly and severally liable to pay the claimants/respondent a compensation of Rs.9,60,000/- together with interest at the rate of 7.5% per annum.

4. Mr.M.Krishnamoorthy, learned counsel appearing for the appellant contended that since the claim petition was filed only under Section 163-A of the Motor Vehicles Act, the Tribunal should not have awarded compensation under Section 166 of the Motor Vehicles Act. He would further contend that since the driver of the lorry who was the deceased in the instant case was found to be rash and negligent in driving the lorry, only a sum of Rs.50,000/- should have been awarded by the Tribunal under no fault liability. Reliance was placed on the decision in National Insurance Company Limited Vs. Chhabirani Samanta and another reported in 2015(2) TN MAC 366 (DB) (Cal.), wherein it has been held that when the claim under Section 163-A of the Motor Vehicles Act is made, the compensation should be assessed following the provision of the second schedule to the Act and that even as per Sarla Verma's case, only 1/3rd deduction towards personal expenses of the deceased should be taken into consideration in respect of claim under Section 163A of the Motor Vehicles Act. The relevant portion is extracted hereunder.

> "There is no dispute that the above noted law on deduction laid down by the Supreme Court applies to a fault liability claim case for compensation. The question is whether the law applies also to a claim for Compensation under Section 163-A.

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In none of the decisions, the Supreme Court has said or held that the above-noted law on deduction is applicable also to a claim under Section 163-A. On the contrary, in paras 12 and 25 of Sarla Verma report, the Supreme Court said as follows:

"12. In fact one-third deduction, got statutory recognition under Second Schedule to the Act, in respect of claims under Section 163-A of the Motor Vehicles Act, 1988".

....

"25. We agree with the contention that the deduction on account of personal living expenses cannot be at a fixed one-third in all cases (unless the calculation is under Section 163-A read with Second Schedule to the Motor Vehicles Act)".

The Opinion of the Supreme Court stated in passing in Para 25 of Sarla Verma report is very important, and it leads to the conclusion that to a claim for compensation under Section 163-A by the parents of a bachelor victim the general principle permitting deduction upto a maximum of 50% in a fault liability claim case cannot be applied; and that in such a case, the deduction cannot exceed the statutorily fixed one-third limit. Hence we are unable to accept the case of the Insurance Company that the Cliams Tribunal ought to have deducted 50%.

5. Per contra, Ms.J.Prithivi, learned counsel appearing for the respondents/ claimants relied on the decision dated 20.04.2011 in CMA No.3377 of 2004 in P.Radhakrishnan and others Vs. (i) M.Murugesan, and (ii) The New India Assurance Company Limited, Dharmapuri and contended that the very fact that the claim petition was decided on merits by the Tribunal, like a claim petition filed under Section 166 of the Motor Vehicles Act, the submission made by the learned counsel for the appellant/The Insurance Company should be rejected. It is further contended by her that an issue with regard to the negligence was framed by the Tribunal and that both the parties adduced evidence in this regard. Therefore, according to the learned counsel for the respondents/ claimants, the claim petition should be treated as one filed under Section 166 of the Motor Vehicles Act.

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6. Section 163-A of the Motor Vehicles Act provides for filing a claim petition, for an accident that took place by reason of use of motor vehicle and it is not necessary to prove any negligence on the part of the driver of the vehicle. But, the Tribunal in a petition filed under Section 166 of the Motor Vehicles Act is required to hold a full-fledged trial in order to collect data on basis of which, the amount of compensation

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could be arrived.

7. In the instant case, the Tribunal should have fixed the income of the deceased only as Rs.40,000/- per annum, as per II Schedule of the Act, since the claim petition was filed only under Section 163-A of the Motor Vehicles Act. The trial court should not also have gone into the negligence aspect.

8. Further more, the full bench of the Honourable Supreme Court in the decision in United India Insurance Company Limited Vs. Sunil Kumar and another reported in 2017(2) TN MAC 499 it has been held that in a proceeding under Section 163A of the Motor Vehicle Act, it is not open for the insurer to raise any defence of negligence on the part of the victim. It is further held thus.

> " It is clear that grant of compensation under Section 163-A of the Act on the basis of the structured formula is in the nature of a final award and the adjudication thereunder is required to be made without any requirement of any proof of negligence of the driver/owner of the vehicle(s) involved in the accident. This is made explicit by Section 163 A(2). Though the aforesaid section of the Act does not specifically exclude a possible defence of the Insurer based on the negligence of the claimant as contemplated by Section 140(4), to permit such defence to be introduced by the Insurer and / or to understand the provisions of Section 163-A of the Act to be contemplating any such situation would go contrary to the very legislative object behind introduction of Section 163-A of the Act, namely, final compensation within a limited time frame on the basis of the structured formula to overcome situations where the claims of compensation on the basis of fault liability was taking an unduly long time. In fact, to understand Section 163-A of the Act to permit the Insurer to raise the defence of negligence would be to bring a proceeding under Section 163-A of the Act at par with the proceeding under Section 166 of the Act which would not only be self-contradictory but also defeat the very legislative intention. "

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9. Further more, the three Judge Bench of the Honourable Supreme Court in U.P. State Road Transport Corporation and others Vs. Trilok Chandra and other reported in (1996) 4 SCC 362 found several defects in the calculation of compensation and the amount worked out in the II schedule of the Act and the Constitution Bench of the Honourable Supreme Court in National Insurance Company Vs. Pranay Sethi and others

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reported in 2017 (2) TN MAC 601 has held that the selection of multiplier shall be as indicated in the Table in Sarla Verma and other Vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 121.

10. Since the petition is filed under Section 163-A of the Motor Vehicles Act, the income of the deceased is fixed at Rs.40,000/- per annum. Since he was aged 42 years on the date of the accident, the proper multiplier as per Sarla Verma case (cited supra) is 15. After deducting 1/3rd towards the personal expenses of the deceased, the loss of dependency is calculated as Rs.4,00,000. Applying the principles laid down in the Constitution Bench of the Honourable Supreme Court in National Insurance Company Vs. Pranay Sethi and others reported in 2017 (2) TN MAC 601, the following amounts are awarded in addition to the loss of dependency.

Sl.No	Heads	Amounts in Rs.
1	Loss of Estate	15,000
3	Loss of Consortium	40,000
4	Funeral Expenses	15,000
	Total	70,000

Thus, a total compensation of Rs.4,70,000/- is awarded to the claimants together with interest at the rate of 7.5% per annum.

11. Mr.M.Krishnamoorthy, the learned counsel for the appellant would contend that the driver can only file a claim under workmen compensation Act and that this court can convert this claim under Workmen Compensation Act. The claimants are the wife and children of the deceased driver. As per Section 147 of the Motor Vehicles Act, driver of a motor vehicle is a third party and there is no bar for his dependents to file a petition under Motor Vehicles Act.

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12. In the result, the order passed by the Tribunal is modified and a sum of Rs.4,70,000/- together with interest is awarded to the claimants together with interest at the rate of 7.5% p.a. The Award amount shall be apportioned in the same ratio as mentioned by the trial court.

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13. With the above observations, the appeal is disposed of. No costs.

Sd/-
Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

mst

To

1. The Additional Subordinate Judge,
   Motor Accidents Claims Tribunal,
   Tindivanam.

+1 cc to M/s.M.Krishnamurthy, Advocate SR No.79365

+1 cc to M/s.A.K.Kumarasamy, Advocate SR No.79309

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KJ(co)
ssm(27/12/18)

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