IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.11.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

CMA.No.313 of 2015

1.Anjalai
2.Minor Ravinkumar
3.Minor Aravindkumar
4.Sellappan
5.Mariammal .. Appellants / Petitioners

(Minors 2 & 3 represented by their next friend Mother, Anjalai)

Vs.

1.N.Sekar
(Exparte before the Tribunal)

2.The Oriental Insurance Co. Ltd.,
Divisional Office - V,
Spenser's Tower, 4th Floor,
No.770A, Anna Salai, P.B.No.2447,
Chennai 600 002. .. Respondents / Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988 against the Award and Decree dated 31.01.2014, made in MCOP.No.11 of 2009, on the file of the Special District Judge, (Motor Accidents Claims Tribunal), Salem.

For Appellants :Dr.P.Jagadeesan

For R1 :Set exparte before the Tribunal

For R2 :Mr.S.Arunkumar

J U D G M E N T

This Civil Miscellaneous Appeal has been filed for enhancement of the compensation granted by the award dated 31.01.2014, made in MCOP.No.11 of 2009, on the file of the Special District Judge, (Motor Accidents Claims Tribunal), Salem.

2.The claimants filed MCOP.No.11 of 2009, on the file of the Special District Judge, (Motor Accidents Claims Tribunal), Salem, claiming compensation of a sum of Rs.11,00,000/- for the death of one Annamalai, husband of the 1st appellant, father of the appellants 2 to 4 and son of the 5th appellant, who died in the accident that took place on 27.07.2008.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to the rash and negligent driving by the deceased and awarded a sum of Rs.50,000/- under 'no fault liability', to the claimants/appellants and directed the 2nd respondent-Insurance Company to pay the same on behalf of the 1st respondent.

4.Not being satisfied with the compensation granted by the Tribunal, the appellants have come out with the appeal, seeking enhancement of the same.

5.The learned counsel appearing for the appellants contended that the claim petition is filed by the appellants under Section 163-A of the Motor Vehicles Act (hereinafter referred to as 'the Act'), which is a Special provision. The learned counsel appearing for the appellants referred to Section 163-A of the Act and contended that the appellants need not plead and prove the negligence. The deceased was working as a mason and was earning a sum of Rs.3,200/- per month. The deceased was 30 years at the time of accident. The Tribunal ought to have awarded Rs.6,91,200/- towards loss of income. The Tribunal ought to have granted compensation under different heads as mentioned in the grounds of appeal. In support of his contentions, the learned counsel for the appellants relied on the judgments of the Hon'ble Supreme Court reported in 2017 (2) TN MAC 753 (SC) [United India Insurance Co. Ltd., Vs. Sunil Kumar and another] and 2018 (2) TN MAC 149 (SC) [Shivaji and another Vs. Divisional Manager, United India Insurance Co. Ltd., and others].

6.Per contra, the learned counsel appearing for the 2nd respondent-Insurance Company contended that the accident occurred only due to the negligence on the part of the deceased and he is responsible for the accident. The deceased drove the two wheeler in a rash and negligent manner and dashed against the lorry from behind. In view of the same, the appellants are not entitled to claim any compensation. The amounts claimed by the appellants are excessive and prayed for dismissal of the appeal.

7.Heard the learned counsel for the appellants as well as the 2nd respondent and perused the materials available on record.

8.From the award of the Tribunal, it is seen that the claim of the appellants was rejected on the ground that the accident occurred due to the rash and negligent driving by the deceased. The Tribunal awarded a sum of Rs.50,000/- under 'no fault liability'. The said finding is erroneous. The issue whether the Insurance Company can raise the defence of negligence on the part of the victim or legal heirs in claim petition filed under Section 163-A of the Act was referred to a larger Bench of Three-Judges of the Hon'ble Apex Court. The Hon'ble Apex Court considering the intention of inserting Section 163-A of the Act and its scope, held in the judgment reported in 2017 (2) TN MAC 753 (SC) [United India Insurance Co. Ltd., Vs. Sunil Kumar and another] that the Insurance Company is not entitled to raise the issue of negligence when the claimants have filed claim petition under Section 163-A of the Act. Again, the said issue was considered by another Three-Judges Bench reported in 2018 (2) TN MAC 149 (SC) [Shivaji and another Vs. Divisional Manager, United India Insurance Co. Ltd., and others], which reiterated the ratio in the earlier judgment. The relevant portions of the said judgments read as follows:

(i)2017 (2) TN MAC 753 (SC) [United India Insurance Co. Ltd., Vs. Sunil Kumar and another]:

> "7.....Section 163-A, on the other hand, was introduced in the New Act for the first time to remedy the situation where determination of final Compensation on fault basis under Section 166 of the Act was progressively getting protracted. The Legislative intent and purpose was to provide for payment of final compensation to a class of Claimants (whose income was below Rs.40,000 per annum) on the basis of a Structured Formula without any reference to fault liability. In fact, in Hansrajbhai Vs. Kodala (supra), the Bench had occasion to observe that:
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> > "Compensation amount is paid without pleading or proof of fault, on the Principle of Social Justice as a Social security measure because of ever-increasing Motor Vehicle accidents in a fast-moving society. Further, the law before insertion of Section 163-A was giving limited benefit to the extent provided under Section 140 for no fault liability and determination of compensation amount on fault liability was taking a long time. That mischief is sought to be remedied by introducing Section 163-A and the disease of delay is sought to be cured to a large extent by affording benefit to the victims on Structured-Formula basis. Further, if the

question of determining Compensation on fault liability is kept alive it would result in additional litigation and complications in case claimants fail to establish liability of the Owner of the defaulting vehicles."

8.From the above discussion, 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.

9.For the aforesaid reasons, we answer the question arising by holding that in a proceeding under Section 163-A of the Act it is not open for the Insurer to raise any defence of neligence on the part of the victim."

(ii)2018 (2) TN MAC 149 (SC) [Shivaji and another Vs. Divisional Manager, United India Insurance Co. Ltd., and others]:

"5.The issue which arises before us is no longer res integra and is covered by a recent judgment of Three-Judges of this Court in United India Insurance Co. Ltd., Vs. Sunil Kumar and another, 2017 92) TN MAC 753 (SC): AIR 2017 SC 5710, wherein it was held that to permit a defence of negligence of the claimant by the insurer and/or to understand Section 163-A of the Act as contemplating such a situation, would be inconsistent with the legislative object behind introduction of this provision, which is “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”. The Court observed that if an Insurer was permitted to raise a defence of negligence under Section 163-A of the Act, it would “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”. Consequently, it was held that in a proceeding under Section 163-A of the Act, the Insurer cannot raise any defence of negligence on the part of the victim to counter a claim for Compensation.”

9.In view of the ratio in the above judgments, the finding of the Tribunal that the appellants are not entitled to compensation as the deceased was negligent and awarding a sum of Rs.50,000/- on no fault liability, is set aside and it is held that the appellants are entitled to claim compensation. In view of the fact that the accident occurred on 27.07.2008 and 10 years have passed by now, instead of remanding the claim petition to Tribunal, the quantum of compensation fixed by the Tribunal is set aside by this Court. From the materials on record, it is seen that the appellants have claimed that the deceased was working as a mason in a construction company and was earning Rs.3,200/- per month, but the same was not substantiated. Considering the contention of the learned counsel for the appellants that the deceased was a mason, a sum of Rs.3,000/- is fixed as notional income of the deceased. As per Ex.P2, Postmortem Report, the age of the deceased is fixed as 30 years. The multiplier applicable is '18'. As per second schedule, 1/3rd of income of the deceased has to be deducted towards personal expenses even when more than 3 persons claimed compensation. For the above reasons, appellants are entitled to loss of income as calculated below:

Rs.3000 x 12 x 18 x 2/3 = Rs.4,32,000/-

Further, the claimants are entitled to a sum of Rs.2,000/- towards funeral expenses, Rs.5,000/- for loss of consortium and Rs.2,500/- for loss of estate.

10.In the result, the Civil Miscellaneous Appeal is partly allowed and the appellants/claimants are awarded Rs.4,41,500/- as compensation. The 1st appellant is entitled to 50%, appellants 2 and 3 are entitled to 25% and appellants 4 and 5 are entitled to 25% of the compensation awarded by this Court. The 2nd respondent-Insurance Company is directed to deposit the modified award amount, along with interest and costs, less the amount already deposited, if any, to the credit of M.C.O.P.No.11 of 2009, on the file of the Special District Judge, (Motor Accidents Claims Tribunal), Salem, within a period of eight weeks from the date of receipt of copy of this judgment. On such deposit, the appellants 1, 4 and 5 are permitted to withdraw their share of the award amount with interest from the date of petition till date of realization and costs, by making necessary application before the Tribunal. The share of the minor appellants 2 and 3 are directed to be deposited in any of the Nationalized Bank, till the minors attain majority. The 1st appellant, mother the minor appellants 2 and 3 is permitted to withdraw the interest amount once in three months for their welfare. No costs.

Sd/-
Assistant Registrar(CS-I)

//True Copy//

Sub Assistant Registrar

gsa

To

1. The Special District Judge,
(Motor Accidents Claims Tribunal),
Salem.

2) The Section Officer,
VR Section,
High Court, Madras.

+1cc to M/s.Dr.P.Jagadeesan, Advocate, S.R.No.81708

+1cc to Mr.S.Arunkumar, Advocate, S.R.No.81825

CMA.No.313 of 2015

KJ(CO)
SSM(02/04/2019).