IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.12.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.77 of 2015
and M.P.No.1 of 2015

The Divisional Manager,
United India Insurance Co. Ltd.,
Ranipet. .. Appellant / 3rd Respondent

Vs.

1.Lakshmi
2.Ramalingam
3.Selvi
4.Raji .. Respondents 1 to 4 / Petitioners

5.Managing Director,
Metropolitan Transport Corporation,
Chennai. .. 5th Respondents / 1st Respondent

6.Mohamed Nazim .. 6th Respondents / 2nd Respondent

(R6 set exparte before the Tribunal)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award and decree dated 20.08.2013 made in M.C.O.P.No.309 of 2007 on the file of the Sub Court, (Motor Accident Claims Tribunal), Cheyyar.

For Appellant : Mr.S.Arunkumar

For RR1 to 3 : Mr.S.Jawahar

For R5 : Mr.S.S.Swaminathan

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the award dated 20.08.2013 made in M.C.O.P.No.309 of 2007 on the file of the Sub Court, (Motor Accident Claims Tribunal), Cheyyar.

2.The appellant-Insurance Company is the 3rd respondent in M.C.O.P.No.309 of 2007 on the file of the Sub Court, (Motor Accident Claims Tribunal), Cheyyar. The respondents 1 to 4 filed the said claim petition, claiming a sum of Rs.10,00,000/- as compensation for the death of one Ramalingam, husband of the 1st respondent and father of the respondents 2 to 4, who died in the accident that took place on 15.01.2006.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that since the claim petition is filed under Section 163-A of the Motor Vehicles Act, (hereinafter referred to as 'the Act'), there is no need to discuss about the negligence aspect and held that the deceased died due to the injuries sustained in the accident and respondents 1 to 4 are entitled to claim compensation for the death of the deceased. The Tribunal held that the 6th respondent and the appellant, as the owner and the insurer of the vehicle respectively, are liable to pay compensation to the respondents 1 to 4 and directed the appellant to pay the sum of Rs.3,36,600/- as compensation to the respondents 1 to 4.

4.Challenging the compensation awarded by the Tribunal dated 20.08.2013 made in M.C.O.P.No.309 of 2007, the appellant-Insurance Company has come out with the appeal.

5.The learned counsel appearing for the appellant contended that the claim petition filed under Section 163-A of the Act is not maintainable as the deceased is a tort-feasor and tort-feasor is not entitled to any compensation for his own wrong doing and also on the ground of pecuniary limits prescribed under the Act. As per the policy marked as Ex.P5, the appellant is not liable to pay compensation and the Tribunal erred in passing the award against the appellant. Without prejudice to the above contention, the learned counsel appearing for the appellant further contended that there is no rebuttable evidence against the allegations made against the driver of the bus and hence, the 6th respondent, is not liable to pay compensation.

6.The learned counsel appearing for the respondents 1 to 4 contended that the respondents 1 to 4 filed claim petition under Section 164-A of the Act. In view of the same, the respondents 1 to 4 need not prove the negligence. The question of negligence is not an issue and Tribunal considering the materials on record, has held that the 6th respondent, owner of the two wheeler as well as the appellant, who is the insurer of the vehicle are liable to pay compensation. The Tribunal has given valid reason for the said finding and prayed for dismissal of the appeal.

7.The learned counsel appearing for the 5th respondent contended that the FIR and evidence on record clearly proves that the accident occurred only due to the rash and negligent riding of the motor bike and 5th respondent is not liable to pay any compensation as the accident did not occur due to the rash and negligent driving by the driver of the bus belonging to the 5th respondent-Transport Corporation.

8.Heard the learned counsel appearing for the appellant, respondents 1 to 3 as well as the 5th respondent and perused the materials available on record.

9.From the materials on record, it is seen that the respondents 1 to 4 have contended that the bus belonging to the 5th respondent-Transport Corporation suddenly crossed the road and dashed against the two wheeler and caused accident. On the other hand, FIR is lodged against the deceased. P.W.1, eye-witness has stated that the deceased drove the two-wheeler in a rash and negligent manner and dashed against the side of the bus when the bus was crossing the road. From the materials on record it is clear that the accident occurred only due to the rash and negligent riding by the deceased. The Tribunal has held that in a petition under Section 163-A of the Act, negligence need not be proved and held that 6th respondent as owner of the vehicle as well as the appellant are liable to pay compensation and appellant as the insurer of the vehicle belonging to the 6th respondent is directed to pay the compensation to the respondents 1 to 4.

10.The contention of the learned counsel for the appellant that the accident occurred only due to the rash and negligent driving by the driver of the bus belonging to the 5th respondent is not supported by any materials. The appellant or the 6th respondent did not let in any evidence to substantiate the contention of the appellant. The Tribunal considering Ex.P1, FIR and evidence of P.W.1, eye-witness, held that the accident occurred only due to the rash and negligent riding by the deceased. There is no error in the said reasoning.

11.The Tribunal considering the fact that the claim petition was filed under Section 163- A of the Act, directed the appellant as the insurer of the vehicle belonging to the 6th respondent to pay the compensation. The contention of the learned counsel for the appellant that the tort-feasor is not entitled to claim compensation from the Insurance Company is without merits. The issue whether the insurance company is liable to pay compensation to the victim or the legal representatives of the deceased who himself is a tort-feasor is no longer res-integra. The Hon'ble Apex Court has held in the judgments 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], 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. 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:
>
> > "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.”

12.As far as the pecuniary loss is concerned, the claimants have stated that the deceased was earning Rs.7,500/- per month. They have not produced any materials to show that the deceased was earning Rs.7,500/- per month. The Tribunal considering the pleadings, fixed the notional income of the deceased at Rs.3,300/- per month. There is no error in the order of the Tribunal fixing the said amount, warranting interference by this Court.

13.The next point of the learned counsel appearing for the appellant is that as per Ex.P5, Insurance Policy, there is no liability on the appellant to pay the compensation for the rider. Ex.P5 was filed by the claimants. The first page of the policy alone was marked as Ex.P5. From Ex.P5, it is seen that policy issued by the appellant is a package policy. In package policy where the rider of the motor cycle is covered by the policy and the Insurance Company is liable to pay compensation. Having failed to let in any evidence and mark the entire Insurance Policy before the Tribunal, it is not open to the appellant to contend that the terms and conditions of Ex.P5 does not cover the rider of the motor cycle. For the above reason, the appeal is liable to the dismissed.

14.In the result, this Civil Miscellaneous Appeal is dismissed and the compensation awarded by the Tribunal at Rs.3,61,000/- with interest at the rate of 7.5% per annum from the date of petition till the date of realization is hereby confirmed. The appellant-Insurance Company is directed to deposit the award amount with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the respondents 1 to 4/claimants are permitted to withdraw their share of the award amount, less the amount if any, already withdrawn, by filing necessary applications before the Tribunal. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

gsa

To

1. The Managing Director,
   Metropolitan Transport Corporation,
   Chennai.

2. The Subordinate Judge,
   (Motor Accident Claims Tribunal),
   Cheyyar.

3. The Section Officer,
   VR Section,
   High Court, Madras.

+1 cc to M/s.S.S.Swaminathan, Advocate, S.R.No.88205

+1 cc to M/s.S.Arunkumar, Advocate, S.R.No.88467

C.M.A.No.77 of 2015
and M.P.No.1 of 2015

CNR(CO)
SSM(13/03/2019).