IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.08.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Civil Miscellaneous Appeal No.452 of 2015

The Branch Manager,
M/s.National Insurance Co. Ltd.,
No.62, Jawaharlal Nehru Street,
Puducherry. ... Appellant

Vs

1.Rani
2.Nandakumar
3.Parthiban
4.Sivasankar ... Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the order 14.11.2013 passed in M.C.O.P.No.723 of 2010 on the file of the Motor Accident Claims Tribunal (III Additional District Judge), Puducherry.

For Appellant : Mr.J.Chandran

For Respondents: Mr.M.Devaraj
for Respondents 1 to 3

R4 - Given up

O R D E R

Aggrieved by the award of the Motor Accident Claims Tribunal (III Additional District Judge), Puducherry in M.C.O.P.No.723 of 2010, dated 14.11.2013, the appellant - insurance company has preferred this appeal.

2. Brief facts are that on 9.7.2010 at 2.45 hours, the deceased Loganathan drove the vehicle bearing registration No.PY-01 T 4994 after loading brandy bottles from Puducherry to Karaikal and while nearing Chidambaram to Sirkazhi Main Road, opposite to Puthoor Polytechnic, the lorry came in a rash and negligent manner from the opposite direction and in order to avoid the uneven consequences, the deceased had turned his

vehicle on the road, due to which, the deceased lost his control and dashed against the tamarind tree. Due to the impact, the deceased sustained serious head injuries. Immediately, he was admitted in RMCH Hospital, Chidambaram where from he was taken to JIPMER Hospital and he succumbed to injuries on 10.7.2010. Regarding the accident, a case in Crime No.306 of 2010 was registered by the Anaikaran Chattiram Police Station. At the time of accident, the deceased was aged 35 years and was earning Rs.350/- per day by doing driving work. The first respondent is the mother and the respondents 2 and 3 are brothers. Hence, the respondents/ claimants have filed the claim petition claiming compensation of Rs.15,00,000/-.

3. Resisting the petition, the appellant has filed counter stating that the accident occurred due to negligence of the deceased and therefore, he was solely responsible for the accident. At the time of accident, the deceased was not possessing valid driving licence. The compensation claimed by the respondents is exorbitant and prayed for dismissal of the claim petition.

4. Before the Tribunal, the 1st petitioner examined himself as P.W.1 and one Palani was examined as P.W.2 and Exs.P1 to P6 were marked. On the side of the appellant, one Elumalai was examined as R.W.1. But no documents were marked.

5. Upon consideration of the oral and documentary evidence, the Tribunal held that the claim petition filed by the respondents under Section 163-A of the Motor Vehicles Act is maintainable. Taking the monthly income of the deceased at Rs.10,500/- at the rate of Rs.350/- per day and deducting one-third towards personal expenses, the Tribunal has fixed the monthly income at Rs.7,000/- and adopting multiplier "11", it has calculated the loss of dependency at Rs.9,24,000/-. Adding further sum of Rs.10,000/- towards funeral expenses and Rs.20,000/- towards love and affection, the Tribunal awarded total compensation of Rs.9,54,000/-. Aggrieved over the quantum of compensation, the appellant - insurance company has filed the present appeal.

6. The learned counsel for the appellant contended that the Tribunal ought to have held that the accident occurred solely due to rash and negligent act of the deceased and the deceased himself is the offender/tort-feasor. Hence, the Tribunal ought to have dismissed the claim petition. As far as quantum of compensation is concerned, the learned counsel submitted that the Tribunal ought to have taken the yearly income of the deceased at R.40,000/- when the claimants have filed petition under Section 163-A of the Act and ought to have deducted 50% instead one-third while arriving the compensation. The learned counsel submitted that the Tribunal went wrong in taking the

income of the deceased at Rs.350/- per day. He would submit that the reasoning of the Tribunal in awarding Rs.9,54,000/- is against the pleadings, facts and the evidence and also against the well laid principles of law. Hence, prayed for setting aside the award of the Tribunal.

7. Reiterating the findings of the Tribunal, the learned counsel for the respondents submitted that upon analysis of the oral and documentary evidence, the Tribunal entertained the claim petition field by the respondents/claimants under Section 163-A of the Act. As far as the quantum of compensation is concerned, the learned counsel for the respondents 1 to 3 submitted that since the deceased was working as lorry driver at the time of accident, the Tribunal has rightly taken the daily income of the deceased at Rs.350/- and awarded total compensation Rs.9,54,000/-. There is no perversity in the order of the Tribunal and prayed for dismissal of the appeal.

8. I have heard Mr.J.Chandran, learned counsel for the appellant and Mr.M.Devaraj, learned counsel for the respondents 1 to 3 and also perused the materials available on record.

9. The grievance of the appellant is that the deceased himself is the tort-feasor and therefore, he had contributed to the accident. However, the Tribunal without considering the said plea, entertained the claim petition filed by the respondents under Section 163-A of the Act. In the claim petition itself, the respondents 1 to 3 have stated that the offending vehicle was driven by the deceased in a rash and negligent manner. Therefore, the entire liability cannot be fastened on the appellant and more over, the Tribunal erred in calculating the loss of dependency as if the claim petition filed under Section 166 of the Act.

10. It is settled that in a claim under Section 163-A of the Act, the claimants need not plead or prove negligence. It is open to the owner or insurer to defend the claim by pleading and establishing that there had been negligence on the part of the deceased.

11. Admittedly, in the case on hand, nothing has been produced by the appellant to establish negligence on the part of the deceased. Therefore, in the absence of any proof, the Tribunal has rightly entertained the claim petition filed by the respondents 1 to 3 under Section 163-A of the Act. This Court does not want to take a different view, as the finding of the Tribunal in respect of fastening the liability is well reasoned.

12. As far as quantum of compensation awarded by the Tribunal is concerned, taking the daily income of the deceased at Rs.350/- and deducting one-third towards personal expenses,

the Tribunal calculated the yearly income at Rs.84,000/-. When the Tribunal entertained the claim petition under Section 163-A of the Act, it ought not to have taken the monthly income at Rs.10,500/- i.e., Rs.350/- per day.

13. By relying upon the decision of the Hon'ble Apex Court in Deepal Girishbhai Soni and others v. United India Insurance Co. Ltd. Baroda, reported in (2004) 5 SCC 385 and the decision of this Court in New India Assurance Co. Ltd., Motor Third Party Cell v. Er.K.Jothilingam and others, r eported in 2009 (2) TN MAC 53 (DB), the learned counsel for the appellant contended that the Tribunal erred in taking the monthly income of the deceased at Rs.10,500/- and it ought to have taken the annual income at Rs.40,000/-.

14. Per contra, the learned counsel for the respondents 1 to 3 contended that once the Tribunal comes to the conclusion that no case has been made out for awarding the compensation under Section 166 of the Act, it is not at liberty to award compensation in terms of Section 163-A. He would further submit that this Court may either determine the compensation by multiplying the percentage on the annual income and determine the just compensation payable to the respondents or as per Section 166 of the Act as done by the Tribunal. The arguments of the respondents 1 to 3 cannot be countenanced, as the claim petition itself filed under Section 163-A of the Act.

15. In Deepal Girishbhai Soni and others v. United India Insurance Co. Ltd. Baroda, supra, the Hon'ble Supreme Court held as under:

> "67. We, therefore, are of the opinion that Kodala has correctly been decided. However, we do not agree with the findings in Kodala that if a person invokes provisions of Section 163-A, the annual income of Rs.40,000 per annum shall be treated as a cap. In our opinion, the proceeding under Section 163-A being a social security provision, providing for a distinct scheme, only those whose annual income is up to Rs.40,000/- can take the benefit thereof. All other claims are required to be determined in terms of Chapter XII of the Act."

16. In New India Assurance Co. Ltd., Motor Third Party Cell v. Er.K.Jothilingam and others, supra, the Hon'ble Division Bench of this Court held that where the application is under Section 163-A of the Act, it is possible to calculate the compensation on the structured formula basis. In paragraph 17, it has been held as under:

"17. The Motor Vehicle Act, 1988 was amended by Act 54 of 1994, inter alia, inserting Section 163-A and the Second Schedule with effect from 14.11.1994. Section 163-A of the MV Act contains a special provision as to payment of compensation on structured formula basis, as indicated in the Second Schedule to the Act. .... It specifies the amount of compensation to be awarded with reference to the annual income range of Rs.3,000/- to Rs.40,000/-. It does not specify the quantum of compensation in case the annual income of the deceased is more than Rs.40,000/-. But it provides the multiplier to be applied with reference to the age of the deceased. The table starts with a multiplier of 15, goes up to 18, and then steadily comes down to 5. It also provides the standard deduction as one-third on account of Personal Living Expenses of the deceased. Therefore, where the Application is under Section 163-A of the Act, it is possible to calculate the compensation on the structures formula basis, even where compensation is not specified with reference to the annual income of the deceased, or is more than Rs.40,000/- by applying for formula : (2/3 x AI x M), that is two-thirds of the annual income multiplied by the multiplier applicable to the age of the deceased would be the compensation. Several principles of tortuous liability are excluded when the claim is under Section 163-A of MV Act. ...."

17. The aforesaid decisions squarely apply to the case on hand. In the case on hand, the claim petition has been entertained under Section 163-A of the Act. Following the aforesaid decisions, this Court fixed the annual income of the deceased at Rs.40,000/-. Deducting one-third towards personal expenses, the loss is calculated at Rs.26,667/-.

18. At the time of accident, the deceased was aged 35 years and the proper multiplier to be adopted is "17" as per the decision of this Court in New India Assurance Co. Ltd., Motor Third Party Cell v. Er.K.Jothilingam and others, supra. Adopting multiplier "17", the loss of dependency is calculated at Rs.4,53,334/- (Rs.26,667 x 17 = Rs.4,53,333.33).

19. The Tribunal awarded Rs.10,000/- towards funeral expenses and Rs.20,000/- towards loss of love and affection to the claimants 1 and 2 and the said amounts are modified as

Rs.2,000/- towards funeral expenses, Rs.5,000/- towards loss of love and affection and Rs.2,500/- towards loss of estate. Thus, the total compensation of Rs.9,54,000/- awarded by the Tribunal is reduced to Rs.4,63,000/- as under:

Heads	Rs.
Loss of dependency	4,53,334.00
Funeral expenses	2,000.00
Loss of love and affection	5,000.00
Loss of estate	2,500.00
Total	4,62,834.00
Rounded off	4,63,000.00

20. The Tribunal ordered interest at the rate of 7.5% per annum from the date of petition till the date of deposit and the same is maintained. Out of the total compensation awarded, the 1st respondent is entitled for Rs.2,50,000/- and the respondents 2 and 3 each entitled for Rs.1,06,500/-.

21. In the result, the Civil Miscellaneous Appeal is partly allowed. The compensation of Rs.9,54,000/- awarded by the Tribunal is reduced to Rs.4,63,000/-. The 2nd respondent is directed to deposit the compensation amount with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and also the proportionate costs within a period of eight weeks from the date of receipt of a copy of this order. Out of Rs.4,63,000/-, the 1st respondent is entitled for Rs.2,50,000/- along with interest and the respondents 2 and 3 are entitled for Rs.1,06,500/- each along with interest. No costs.

s/d-
Assistant Registrar(CS VI)

True Copy

Sub-Assistant Registrar

vs
To
The Motor Accident Claims Tribunal,
III Additional District Judge,
Puducherry.

+1 CC to Mr.J.Chandran, Advocate sr 59078.

C.M.A.No.452 of 2015

SS(CO)
SP(03/12/2018)