IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 20.08.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Civil Miscellaneous Appeal No.707 of 2018
and
CMP.Nos.6086 & 9907 of 2018

The New India Assurance Co. Ltd.,
Branch Office,
Thiru.Vi.Ka. Road,
Villupuram. ... Appellant/2nd Respondent

Vs

1.Hema Kalai Rani
2.Ramamoorthy
3.Vijaya ... Respondents/Petitioner & Respondents 1 & 3

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 20.11.2017 passed in M.A.C.T.O.P.No.253 of 2015 on the file of the Motor Accident Claims Tribunal (Special District Judge, FAC to deal with MCOP Cases), Villupuram.

For Appellant : Mr.M.Krishnamoorthy

For Respondents : Mr.K.Varadhakamaraj (for R1)

R2 & R3 - No Appearance

JUDGMENT

Aggrieved by the award of the Motor Accident Claims Tribunal (Special District Judge to deal with MCOP Cases), Villupuram in M.C.O.P.No.253 of 2015, dated 20.11.2017, the appellant - insurance company has preferred the Civil Miscellaneous Appeal.

2. Brief facts are that on 4.7.2015, the deceased Vinoth was driving the car bearing registration No.TN-32 AD 0066 from Chidambaram to Salem and at about 15.00 hours when the car was nearing Madur Milk Dairy, the said car dashed against the road

side wall and capsized. Due to the impact, the deceased and other occupants viz., Vimal Raj, Thillai Govindan and Muthulakshmi travelled in the car sustained grievous injuries. Immediately, they were taken to Government Headquarters Hospital, Salem, but on the way to the hospital, the deceased Vinoth died. Regarding the accident, a criminal case in Crime No.163 of 2015 was registered by Thiyagadurgam Police Station. The second respondent is the owner of the car and the appellant is the insurer. At the time of accident, the deceased was aged 32 years and was earning Rs.40,000/- per month by working as Marketing Executive in Indian Express Paper. Stating that since the first respondent lost the bread winner of the family, she filed the claim petition under Section 163-A of the Motor Vehicles Act claiming compensation of Rs.27,00,000/- by arraying the mother of the deceased as third respondent in the original petition.

3. Resisting the claim petition, the appellant insurance company filed counter stating that the accident occurred due to careless driving of the car by the deceased himself. Hence, it is a clear case of own negligence on the part of the deceased, for which the appellant is not liable. Without prejudice to their contentions, the appellant denied the age, income and occupation of the deceased. The appellant had also denied the valid policy at the time of accident. It is stated in the counter that the total compensation claimed by the first respondent is highly excessive.

4. Before the Tribunal, the claim petitions filed by one Vimal Raj, who is stated to be the legal heir were also tried along with the claim petition filed by the first respondent herein. As far as the claim petition filed by the first respondent is concerned, the first respondent examined herself as P.W.1 and marked Exs.P1 to P9. No oral and documentary evidence was adduced on the side of the appellant.

5. Upon consideration of the oral and documentary evidence, the Tribunal held that the accident occurred due to the rash and negligent driving of the car by the deceased Vinoth. Finding that at the time of accident, the offending car was stood in the name of the second respondent herein and insured with the appellant, the Tribunal directed the appellant to pay the compensation to the respondents 1 and 3, who are wife and mother of the deceased Vinoth. Holding that the claimant viz., Vimalraj in M.C.O.P.Nos.254 and 255 of 2015 was not able to produce the legal heirship certificate, the Tribunal dismissed the aforesaid claim petitions filed by Vimalraj for the death of the deceased Thillai Govindan and Muthulakshmi. As far as the present claim petition is concerned, the Tribunal has taken the monthly income of the deceased Vinoth at Rs.6,000/- and adopting

multiplier 16 and also adding conventional damages, awarded total compensation of Rs.12,32,000/- payable with interest at the rate of 7.5% per annum. Challenging the same, the appellant insurance company has filed the present appeal.

6. I heard Mr.M.Krishnamoorthy, learned counsel for the appellant and Mr.K.Varadhakamaraj, learned counsel for the first respondent. No representation on behalf of the respondents 2 and 3.

7. The learned counsel for the appellant submitted that the Tribunal ought to have dismissed the claim petition as the deceased was solely responsible for the accident. The deceased drove the car owned by the second respondent and insured with the appellant in a rash and negligent manner with uncontrollable speed resulting in bursting of tyre and hitting the central median and rolling over causing the death of two occupants apart from himself. He would submit the Tribunal after having held that the deceased was rash and negligent manner and was responsible for the accident, ought to have dismissed the claim petition as the tortfeasor or his legal heirs cannot maintain the claim. He would further submit that the total compensation awarded by the Tribunal is highly excessive.

8. Per contra, the learned counsel for the first respondent submitted that the Tribunal after analysing the oral and documentary evidence, rightly determined the compensation and there is no need to interfere with the same.

9. I have considered the submissions made by the learned counsel appearing on either side and also perused the materials available on record.

10. Admittedly, in the case on hand, the first respondent has filed the claim petition under Section 163-A of the Motor Vehicles Act claiming compensation for the death of her husband Vinoth in the accident occurred on 04.7.2015. It is not in dispute that at the time of accident, the deceased Vinoth drove the car bearing registration No.TN-32 AD 0066 owned by the second respondent and insured with the appellant insurance company. It is clear from Ex.P1-FIR that in the offending car, apart from the deceased Vinoth there were other occupants viz., Thillai Govindan, Muthulakshmi, Sivaraman, Aravindan and Vijaya travelled. In Ex.P1-FIR, the complainant Sivaraman stated that on 4.7.2015 at about 3.00 P.M., when they were proceeding near Madura Milk Dairy, the deceased drove the car in a rash and negligent manner and at that time, the right side tyre was burst and the car dashed against the median of road and then capsized.

11. The Tribunal, after analysing the oral and documentary

evidence held that in Ex.P4-Motor Vehicle Inspector's report, there was no mention regarding tyre burst and also there was no mechanical defect in the vehicle. However, the Tribunal held that the accident occurred only due to rash and negligent driving of the vehicle by the deceased Vinoth. There is no quarrel about the involvement of the offending car in the accident and driving of the same by the deceased Vinoth at the time of accident.

12. As stated supra, the first respondent filed the claim petition under Section 163-A of the Motor Vehicles Act. It is settled that in a claim under Section 163-A of the Motor Vehicles Act, the injured and/or claimant 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 injured claimant.

13. Section 163-A of the M.V. Act under which compensation has been claimed by the respondents provides as follows:-

> "163-A. Special provisions as to payment of compensation on structured formula basis.-
>
> (1) Notwithstanding anything contained in this Act or in any other law for the time being in force or Instrument having the force of law, the owner of the motor vehicle or the authorized insurer shall be liable to pay in the case of motor vehicle or the authorized insurer shall be liable to pay in the case of death or permanent disablement due to accident arising out of the use of motor vehicle, compensation, as indicated in the Second Schedule to, the legal heirs or the victim, as the case may be.
>
> Explanation.- For the purpose of this sub-section, "permanent disability" shall have the same meaning and extent as in the Workmen's Compensation Act, 1923 (8 of 1923).
>
> (2) In any claim for compensation under sub-section (1), the claimant shall not be required to plead or establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act or neglect or default of the owner of the vehicle or vehicles concerned or of any other person.
>
> (3) The Central Government may, keeping in view the cost of living by notification the Official

Gazette, from time to time amend the Second Schedule. "

14. A Larger Bench of the Hon'ble Supreme Court has taken up the reference in United India Insurance Co. Ltd. v. Sunil Kumar and another, reported in 2017 (2) TN MAC 753 (SC), wherein Three-Judges Bench of the Hon'ble Supreme Court answered the reference as under:

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

15. Thus, from the aforesaid decision of the Larger Bench of the Hon'ble Supreme Court, it is clear that it is not open for the insurer to raise any defence of negligence on the part of the victim in a proceeding under Section 163-A of the M.V. Act.

16. In the present case, when the Tribunal entertained the claim petition under Section 163-A of the Motor Vehicles Act, it ought not to have awarded compensation as if the claim petition filed under Section 166 of the Motor Vehicles Act.

17. In so far as the monthly income determined by the Tribunal is concerned, this Court is not able to countenance the monthly earning taken by the Tribunal. When the Tribunal entertained the claim petition under Section 163-A of the Act, it ought to have taken the annual income at Rs.40,000/-.

18. 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, reported in 2009 (2) TN MAC 53 (DB), this Court as well as the Hon'ble Supreme Court held 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.

19. 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."

20. In New India Assurance Co. Ltd., Motor Third Party Cell v. Er.K.Jothilingam and others, supra, the 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 structured 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. ....”

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

22. At the time of accident, the deceased was aged 32 years. For the age group 31 - 35, the multiplier to be adopted is “16”. Adopting multiplier “16”, the loss of dependency is calculated at Rs.4,26,672/- (Rs.26,667 x 16 = Rs.4,26,672/-).

23. In so far as conventional damages are concerned, the Tribunal awarded Rs.50,000/- towards loss of consortium to the first respondent and; Rs.10,000/- towards love and affection to the third respondent and another Rs.20,000/- towards funeral expenses. Since amounts awarded under the aforesaid heads are reasonable, the same are maintained.

24. In view of the above discussions, the total compensation of Rs.12,32,000/- awarded by the Tribunal is reduced to Rs.5,06,672/-, rounded of to Rs.5,07,000/- as under:

Heads	Rs.
Loss of dependency	4,26,672.00

Heads	Rs.
Loss of consortium to 1st respondent	50,000.00
Loss of love and affection to 3rd respondent	10,000.00
Funeral expenses	20,000.00
Total	5,06,672.00
Rounded off	5,07,000.00

25. The Tribunal awarded interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and the same is maintained. Out of the total compensation of Rs.5,07,000/-, the first respondent is entitled to Rs.3,50,000/- and the third respondent is entitled to Rs.1,57,000/- with accrued interest.

26. In the result, the Civil Miscellaneous Appeal is partly allowed. The compensation of Rs.12,32,000/- awarded by the Tribunal in M.C.O.P.No.253 of 2015 is reduced to Rs.5,07,000/-. The appellant insurance company is directed to deposit the reduced compensation amount with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit. No costs. Consequently, connected miscellaneous petitions are closed.

It is stated that pursuant to the order passed in C.M.P.No.6086 of 2018 dated 04.04.2018, the appellant insurance company deposited 50% of the award amount together with interest. The respondents 1 and 3 are permitted to withdraw their respective shares along with accrued interest on filing proper application before the Tribunal. The appellant insurance company is permitted to withdraw the amount, if any, lying in the credit of M.A.C.T.O.P.No.253 of 2015 after withdrawing the amount by the respondents 1 and 3.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

vs

To

The Motor Accident Claims Tribunal,
Special District Judge to deal with MCOP Cases,
Villupuram.

Copy to:

The Section Officer,
V.R.Section,
High Court, Madras.

+1 cc to Mr.M.Krishnamoorthy, Advocate SR.No.56684
+1 cc to Mr.K.Varadha Kamaraj, Advocate SR.No.57023

C.M.A.No.707 of 2018 and
CMP.Nos.6086 & 9907 of 2018

PA(CO)
CSL/15.02.2019