

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 10.04.2018

Coram

The Honourable Mr. Justice S.BASKARAN

Civil Miscellaneous Appeal No.472 of 2017

1.T.Amarlorpavam

2.A.Mariadhas

3.Minor Beena M.Amala

(Minor rep. by mother and next friend
the first petitioner herein) ...

Appellants/Petitioners

...vs..

1.A.Narayanan

2.Bajaj Allianz Insurance Company Ltd.,

Prince Tower, Nungambakkam,

Chennai-34

.... Respondents/Respondents

This Civil Miscellaneous Appeal has filed under Section 173 of Motor Vehicles Act, 1988, against the Fair and Decreetal Order dated 05.12.2016 made in MCOP.No.1999 of 2009 on the file of the Motor Accident Claims Tribunal/The Chief Judge, Small Causes Court, Chennai.

For Appellant : Mr.S.Udhayakumar

For Respondents : Mr.M.B.Gopalan for R-2

JUDGMENT

Being aggrieved over the finding of the Tribunal, dated 05.12.2016 made in MCOP.No.1999 of 2009 on the file of the Motor Accident Claims Tribunal/The Chief Judge, Small Causes Court, Chennai, the petitioners/claimants filed this present appeal to set aside the order passed by the Tribunal.

2. For the sake of convenience, the parties will be hereinafter referred to in this judgment as arrayed before the Tribunal.

3. The case of the petitioners is that on 10.08.2008 at about 10.30 a.m., as the deceased was proceeding in a two

wheeler bearing Registration No.TN-7-AL-8388 as pillion rider from Kappikadu to Kuzhithurai, a three wheeler vehicle came at high speed, crossed the road negligently dashed on the two wheeler resulting in the death of both the rider and pillion rider of the said two wheeler bearing Registration No.TN-7-AL-8388. The accident occurred due to the negligence of the driver of both the vehicles. The deceased was aged about 18 years and was doing part time job in Auto Mobile Industries earning a sum of Rs.10,000/- per month. The petitioners, who are the parents and sister of the deceased suffered from the sudden demise of the son of the first and second petitioner. Further, they suffered loss of contribution from their only son and also loss of love and affection of the deceased. Hence, the petitioners seek a sum of Rs.20,00,000/- as compensation from the respondents who are the owner and insurer of the two wheeler in which the deceased travelled as pillion rider.

4. On the other hand, opposing the claim petition, the Second respondent-Insurance Company by filing counter contends that they denied the claim of the petitioner about the manner in which the accident occurred. The petitioners are to prove that the rider of the two wheeler possessed valid licence at the time of the accident. The petitioners also to establish whether the two wheeler bearing Registration No.TN-7-AL-8388 was insured with the second respondent at the time of the accident. The owner of the said vehicle has not informed the second respondent about the accident. The claim of the petitioners about the age, avocation and income of the deceased is denied. The allegation of the petitioners that the two wheeler was involved in the accident on the said date and time is denied. The petitioners claim that the police registered the case in Crime No.34 of 2008 for the offence under Section 304-A IPC against the driver of the vehicle is not admitted. The claim of the petitioners is exorbitant. Thus, the second respondent-Insurance Company sought for dismissal of this petition.

5. Before the Tribunal, the petitioners examined P.W.1 and P.W.2 and produced documents Ex.P1 to Ex.P7 to prove their claim. On the side of the respondents, R.W.1 was examined and documents Ex.R1 and Ex.R2 was produced.

6. The Tribunal, on the basis of materials available on record, held that it is not proved the negligence of the first respondent vehicle driver alone caused the accident and as such the respondents who are the owner and insurer of the said two wheeler are not liable to pay any compensation. Hence, the Tribunal dismissed the petition. Aggrieved over the said finding of the Tribunal, the petitioners/claimants come forward with the present appeal.

7. Heard the learned counsel appearing for the petitioners/appellants and the learned counsel appearing for the second respondent and perused the materials available on record.

8. The learned counsel appearing for the appellants/petitioners/ claimants contends that the Tribunal failed to consider the settled principle of law that under Section 163-A of the Motor Vehicles Act, the petitioners are entitled to file the claim petition against the owner and insurer of the vehicle in which the deceased travelled as pillion rider. The Tribunal failed to see that the involvement of the vehicle is sufficient to grant compensation under Section 163-A of the Motor Vehicles Act. The Tribunal failed to see under the comprehensive policy, the pillion rider is entitled to get compensation and as such dismissal of the petition against the respondents is not proper. The Tribunal also failed to consider the fact that if two or more vehicles are involved, the claimants are entitled to seek compensation from any one of the vehicle owner and insurer. Further, the Tribunal failed to consider the fact that the impleading petition filed by the second respondent is pending and no order was passed by the Tribunal on the said application. Thus, the petitioners seek to entertain the appeal and pass the award granting just and fair compensation to the petitioners.

9. Per contra, the learned counsel appearing for the second respondent-Insurance Company contends that the Tribunal is justified in dismissing the claim petition as the negligence for causing the accident is fixed on the driver of the other vehicle involved in the accident which is not impleaded in the petition. The Tribunal has passed an order based on the appreciation of evidence available on record and the same needs no interference. Thus, the second respondent insurance Company sought for dismissal of the appeal.

10. The petitioners contended that the deceased Bebin travelled as pillion rider in the two wheeler bearing Registration No.TN-7A-L-8388, when the accident occurred. Admittedly, the said two wheeler dashed against another vehicle resulting in the death of pillion rider as well as the rider of the two wheeler. The petition is filed under Section 163-A of the Motor Vehicles Act. The Tribunal on appreciation of the evidence on record found that the police registered Ex.P1 First Information Report against one Sivakumar, the driver of the three wheeler vehicle bearing Registration No.TN-20-4935 and after completion of investigation, the police filed Ex.P2 final report against the driver of the said three wheeler vehicle only and as per the case registered by the police under Ex.P1 First Information Report as well as Ex.P2 Final Report, there is no negligence placed on the rider of the two wheeler bearing Registration No.TN-7-AL-8388, in which the deceased travelled as

pillion rider. Considering the same, the Tribunal held that as no negligence is attributed to the driver of the two wheeler in which the deceased travelled as pillion rider, the petitioners/claimants are not entitled to seek any compensation from the owner and insurer of the said two wheeler. Thus, the Tribunal dismissed the claim petition.

11. Disputing the said conclusion of the Tribunal, the learned counsel appearing for the petitioners/claimants contended that the involvement of the two wheeler in which the deceased travelled as pillion rider and another three wheeler vehicle in the accident on the said date and time is not disputed. In such circumstances, the petitioners contended that they are entitled to file claim petition against the owner and insurer of the any one of the vehicles involved in the accident and the same is maintainable. Further, as the claim is made under Section 163-A of the Motor Vehicles Act, there is no need to prove any negligence on the part of the driver of the vehicle which dashed against the vehicle in which the deceased travelled was the cause for the accident. Further, it is contended that no duty is cast upon the petitioner to prove the aspect of negligence on any one of the driver. In support of the said contention, the learned counsel appearing for the appellants/petitioners/claimants relied upon the ruling of the Apex Court reported in 2017 (2) TN MAC 753 (SC) in UNITED INDIA INSURANCE COMPANY LTD., Vs. SUNIL KUMAR AND ANOTHER, and contended that in any claim made under Section 163-A of the Motor Vehicle Act, the insurer cannot raise any defence on the ground that the negligence on the part of the victim only caused the accident to avoid liability. In the said ruling, it has held as follows:-

"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 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 a\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 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 negligence on the part of the victim.

12. The learned counsel appearing for the appellants also relied upon the ruling of the Apex Court reported in 2008 (1) TN MAC 135, where in it has held as follows:-

The learned Counsel appearing for the Appellant-Insurance Company placed reliance on the decision of the Hon'ble Supreme Court reported in National Insurance Co.Ltd. v. Sinitha, 2012(1) TN MAC 1(SC): 2012(2) SCC 356. But, I am not inclined to agree with the said contention for the reason that the Larger Bench of the Supreme Court of India in the decision reported in Deepal Girishbhai Soni v. United India Insurance Co. Ltd., 2004(1) TN MAC 193 (SC) :2004ACJ 934 (SC), has held that Section 163-A of the Motor Vehicles Act can be invoked even in cases when negligence is on the part of the victim. This decision by a Three-Judges Bench has been followed in United India Insurance Co. Ltd. v. Sunil Kumar and another, 2013(2) TN MAC 737 (SC): 2013(6) CTC 891 (SC). THE Hon'ble Supreme Court has held that the claim under Section 163-A of the Act shall not be defeated by the Insurance Company or the vehicle Owner for the reason of any wrongful act, neglect or default of the victim. Though an authoritative pronouncement is awaited from a Larger Bench as on date, this Court feels bound by the decision rendered in Deepal Girishbhai Soni case. The questions of law raised in this Appeal have already been

answered against the Appellant in these two decisions. I find no merit in this Appeal. The Award dated 28.3.2013 made in M.C.O.P. No.551 of 2010 on the file of the Motor Accident Claims Tribunal (Addl. District & Sessions Judge), Dindugul is confirmed.

13.It is therefore clear from the above said rulings that even assuming that there was negligence on the part of the driver of the vehicle in which the victim travelled and the victim himself was the cause for the accident in such circumstances also, the victim is entitled to seek compensation under Section 163-A of the Motor Vehicles Act. In the case on hand, admittedly, the two wheeler in which the deceased travelled as pillion rider was involved in the accident even though the police registered the case against the driver of the other vehicle. As per Ex.P1 First Information Report, the vehicle driven by one Sivakumar bearing Reg.No.TN-20-4935. It is also clear from Ex.R2 Copy of the final report filed by the Police that the deceased travelled as pillion rider in the two wheeler bearing Reg.No.TN-7-AL-8388 and the accident was caused due to the negligence of the driver Sivakumar of the vehicle with Reg.No.TN-20-4935. The Tribunal, on the basis of the same, concluded that there was no negligence on the part of the rider of the two wheeler in which the deceased travelled and as such, the respondents who are the owner and insurer of the two wheeler bearing Reg.No.TN-7-AL-8388 are not liable to pay any compensation. Thus, the Tribunal dismissed the claim petition.

14.However, in the light of the above said discussion, it is apparent that any claim petition filed under Section 163-A of the Motor Vehicles Act, the claimant is entitled to seek compensation from any one of the owner or insurer of the vehicle without proving negligence on the part of the said vehicle driver. Therefore, the conclusion of the Tribunal is not proper and the same is liable to be set aside.

15.It is to be seen as to whether and how much compensation, the petitioners are entitled for? According to the Petitioner, the deceased was aged 18 years and was doing Part time job in Automobile and earning Rs.10,000/- per month. The Petitioners has not produced any documents to prove the age of the deceased. As such, on the basis of Ex.P4 Post Mortem Certificate as well as Ex.P2 Death Certificate, the age of the deceased is fixed as 18 years. The Petitioner has not produced any proof of income of the deceased. As such, the annual income of the deceased is fixed at Rs.40,000/-. The deceased being aged 18 years, the multiplier to be applied is '18'. As the deceased was a bachelor, 50% of the income has to be deducted towards personal expenses. Thus, the loss of dependency is calculated

as under:-

Rs.40,000/- x 50% deduction Rs.20,000/- =Rs.20,000 x 18 =
3,60,000/-

16. Following the Apex Court decision reported in 2017 (2) TN MAG 609 (SC) NATIONAL INSURANCE CO. LTD., Vs. PRANAY SETHI AND OTHERS, towards loss of estate and funeral expenses, this Court is inclined to modify the compensation as under:-

Funeral Expenses = Rs. 15,000.00
Loss of Estate = Rs. 15,000.00

Considering the 1st and 2nd Petitioners are parents of the deceased and the 3rd Petitioner is the sister of the deceased, they are entitled to get compensation for loss of love and affection. Hence, following the judgment of Kerala High Court in the case of VALSAMMA Vs. NATIONAL INSURANCE COMPANY [MACA.Nos.711 and 921 of 2010], Rs.80,000/- is provided towards "loss of love and affection". In view of the foregoing discussions, the following amounts are awarded under various heads and compensation to the petitioners/claimants.

Pecuniary Loss of income	Rs. 3,60,000.00
Loss of love and affection	Rs. 80,000.00
Loss of Estate	Rs. 15,000.00
Funeral Expenses	Rs. 15,000.00

Total Rs. 4,70,000.00

17. In the result, the Civil Miscellaneous Appeal is allowed. No costs. The Order and decreetal order 05.12.2016 made in MCOP.No.1999 of 2009 passed by the learned Chief Judge, Small Causes Court, Chennai is here by set aside. The Appellants/Petitioners are entitled to a sum of Rs.4,70,000/- as compensation with interest at 7.5% per annum from the date of claim petition to till the date deposit the entire award amount. The second respondent-Insurance Company is directed to deposit the entire award amount of Rs.4,70,000/- within a period of six weeks from the date of receipt of a copy of this order. On such deposit, the petitioners 1 and 2 are entitled to get 40% each and the third petitioner who attained majority by this time is entitled to get 20% of the award amount. The petitioners/claimants are permitted to withdraw their respective share with accrued interest by filing necessary application before the Tribunal.

Sd/-

Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

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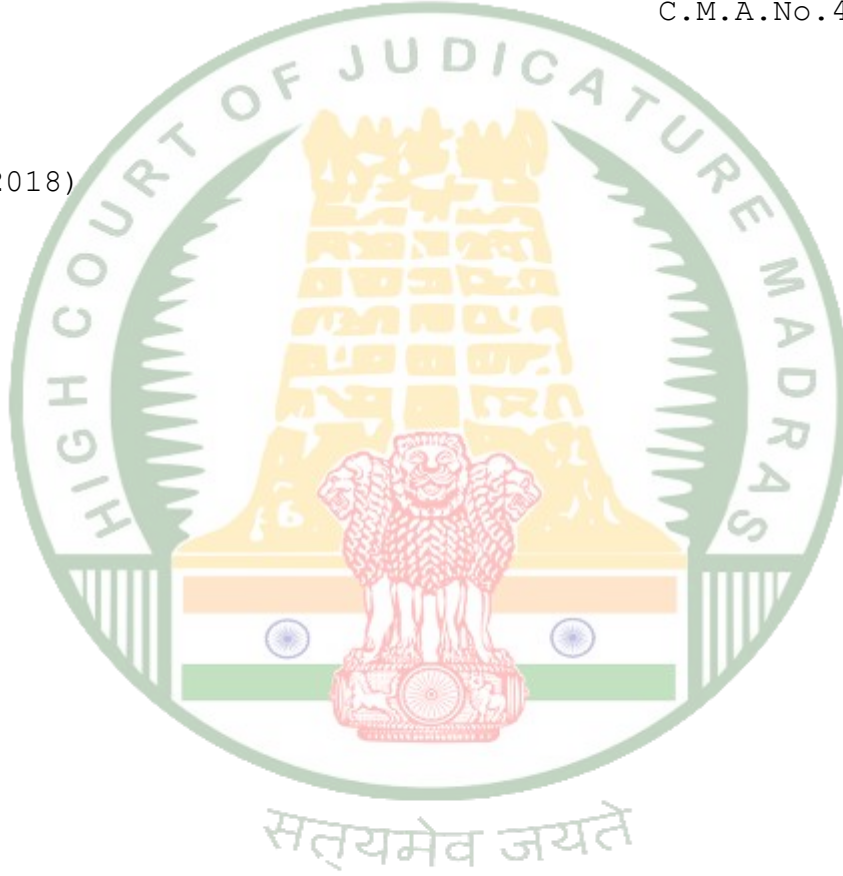
To

The Chief Judge,
Motor Accident Claims Tribunal,
Small Causes Court,
Chennai.

+1cc to Mr.M.B.Gopalan, Advocate, S.R.No. 27381
+1cc to Mr.S.Udhya Kumar, Advocate, S.R.No. 26187

C.M.A.No.472 of 2017

SJ(CO)
GN(25/09/2018)



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