BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.02.2018

CORAM:

THE HONOURABLE MR.JUSTICE A.M.BASHEER AHAMED

C.M.A(MD)No.76 of 2013

1.M.Janaki
2.M.Mariyappan
3.M.Mariammal : Appellants/Claimants

Vs.

1. Ramesh

2. The Manager,
National Insurance Company Limited,
35, North Usman Road,
T.Nagar,
Chennai - 17 : Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and decree of the MACT, (IV Additional District Judge), Madurai in M.C.O.P.No.1835 of 2009, dated 29.06.2012.

For Appellants : Mr.S.A.Vijayakumarinatarajan

For Respondent-2 : Mr.J.S.Murali

JUDGMENT

This Civil Miscellaneous Appeal has been preferred against the Judgment and Decree, dated 29.06.2012, made in M.C.O.P.No.1835 of 2009, on the file of the Motor Accidents Claims Tribunal, (IV Additional District Judge), Madurai.

2. The appellants herein are the claimants, who filed a claim petition in M.C.O.P.No.1835 of 2009, on the file of the Motor Accidents Claims Tribunal, (IV Additional District Judge), Madurai, claiming a sum of Rs.3,06,200/-, as compensation, for the death of one Muthukrishnan, while he was driving a Motor Cycle, bearing Registration No.TN-10-A-8059, at about 2.30 p.m., on

24.08.2008 in Madurai Thevar Bridge, and was hit by unknown vehicle, which was coming in a rash and negligent manner and he sustained grievous injuries and died on 25.08.2008, due to the injuries, while he was admitted in the Appollo Speciality Hospital, Madurai.

3. The first respondent herein is the owner of the above vehicle and the said vehicle was insured with the 2nd respondent herein and the insurance policy was in force, at the time of the accident. The first respondent / vehicle owner was set *ex-parte* before the Tribunal as well as the before this Court. The 2nd respondent alone was contesting the claim filed by the Legal Representatives of the deceased Muthukrishnan, under Section 163-A of the Motor Vehicles Act as amended by Motor Vehicles (Amendment) Act, 1994 by filing a counter statement and also examined its two officials, as witnesses. The 2nd claimant was examined as P.W.1, by filing proof affidavit, in which, he has stated that he came to know over cellphone that his father was hit by an unknown vehicle and the deceased father was working as salesman in egg shop and he has given a complaint, which was registered as Ex.P1 / FIR. P.W.1 was also admitted that he is not an eyewitness of the occurrence. P.W.2 was examined, as eyewitness to the occurrence, by filing proof affidavit, in which he has stated that he has seen one TATA Sumo Vehicle hit the motor cycle, bearing Registration No.TN-10-A-8059 and fled away without stopping. In contra, the 2nd respondent Insurance Company has not chosen to produce any evidence to dispute the evidence of P.W.2.

4. The 2nd respondent / insurer has contended before the Tribunal that the manner of the accident, as narrated by the claimants, is not true and the deceased, who purchased the vehicle, which was driven on the date of accident, from the first respondent, drove the motor cycle very rashly and negligently and hit against the Thever Bridge and thereby, the accident had happened and there was no contract of indemnity between the first respondent and the insurer, on the date of the alleged accident, and hence, the 2nd respondent Insurance Company is not liable to pay any compensation to the claimants and the claimants are not eligible persons to claim compensation, under Section 163-A of the Motor Vehicles Act as amended by Motor Vehicles (Amendment) Act, 1994.

5. The 2nd respondent would further contend that the deceased, who drove the motor cycle, was not having a valid and effective driving licence, to drive the said vehicle and the insurer is not liable to pay any compensation, for the violation of the policy condition.

6. P.Ws.1 and 2 have categorically admitted, during their evidence, by filing proof affidavit that the deceased was having a valid driving licence till 07.08.2007 and thereafter, it was not

renewed and there was no valid driving licence to the deceased on the date of accident ie., on 24.08.2008. Though the xerox copy of the driving licence of the deceased in the name of the deceased containing the details was produced as Ex.R2 series, the 2nd respondent did not take any steps to summon the concerned RTO officials for proving the fact that the deceased was not having any valid driving licence, on the date of the accident. Hence, the contention of the insurer, regarding non-possession of valid driving licence, by the deceased, on the date of accident, goes out.

7. The 2nd respondent insurer has admitted that the first respondent / owner of the said motor vehicle, which was driven by the deceased on the date of accident, and the certificate of registration of the said vehicle stands in the name of the first respondent / Ex.R2 series, but there is no acceptable evidence has been produced by the insurer to the effect that the deceased had purchased the said motorcycle from the first respondent and the deceased was the lawful owner of the said vehicle, on the date of the accident.

8. Mere producing the xerox copy of the transfer forms containing the signatures of the transferer without details and name of the transferee, is not sufficient to prove that the first respondent sold the motor cycle to the deceased prior to the date of accident. Hence, the contention of the 2nd respondent insurer that the deceased was the owner of the vehicle, on the date of the accident, goes out.

9. The Tribunal, after rejecting the contention of the 2nd respondent that the present case comes within the category of self-negligence, has held that the deceased, who drove the vehicle belonged to the first respondent. The deceased / rider steps into the shoes of the owner, on the basis of it, the deceased cannot be considered as 3rd party, and hence, the application under Section 163-A of the said Act, is not maintainable and awarded of a sum of Rs.50,000/-, as compensation under Section 140 of the Motor Vehicles Act, for no such liability, since the case in which the deceased died is hit and run, under Section 161 of the Motor Vehicles Act. Challenging the said Award, the legal representatives of the deceased / claimants filed the present appeal.

10. Admittedly, in this case, the deceased was driving the vehicle at the time of accident. He died due to the injuries caused in the accident. The counsel for the appellants contended that it is not even necessary to plead that there was some wrongful act or neglect or default on the part of somebody / anybody and therefore, the petition under Section 163-A of the said Act, is maintainable eventhough the deceased himself had been the driver of the vehicle at the time of the accident. The

learned counsel in support of his contentions, has relied on the Judgment of this Court in ***Robacca Vs. Nagarjuna Finance Ltd.,*** reported in ***(2012 (2) TN MAC 763),*** in which, the Judgment of Hon'ble Apex Court in ***National Insurance Co.Ltd., Vs. Sinitha and Others*** reported in ***(2012 (1) TN MAC 1)*** and also in ***Oriental Insurance Company Ltd., Vs. JhumsSaha*** reported in ***(2007 (2) TN MAC 56)*** were referred, wherein it has been held that, " It is not for the claimants to show that the deceased driver was not at fault but it is for the insurance company to show that the driver himself was at fault. Under Section 163(A) of the Motor Vehicles Act, it is imperative for the Insurance Company to have pleaded negligence and to have established the same if at all the Insurance Company want to defeat the claim of the claimants. It is the for Insurance Company to establish that there had been negligence on the part of the deceased and therefore, he is not entitled to any compensation, as per the decision reported in 2012 (1) TN MAC 1 SC *(supra)* and hence, the claim by the legal representatives under Section 163-A of the Motor Vehicles Act is maintainable."

11. In this case on hand, the 2nd respondent Insurance Company has not proved that there had been negligence on the part of the deceased / driver of the vehicle and that therefore, the claimants' are not entitled to claim compensation. Therefore, this Court also held that the claim by the legal representatives of the deceased under Section 163(A) of the M.V.Act., is maintainable.

12. Admittedly, there is no proof or evidence by the claimants to show that the deceased was working as salesman and was earning Rs.3,200/- per month. The accident took place on 24.08.2008. The claimants have admitted that the deceased was earning Rs.3200/- per month. The deceased was aged about 52 years, on the date of accident. One third (1/3) is deducted for personal and living expenses of the deceased. Hence, the loss of dependency, due to death of the deceased in the accident, is Rs.2,81,600/-. (3200 x 12 x 11 x 2/3). The appellants / claimants restricted their claim in this appeal also towards the funeral expenses as Rs.2500/; consortium as Rs.5,000/-; Loss of estate as Rs.2500/- and medical expenses Rs.15,000/-, totally Rs.25,000/-, towards general damages for the death, as per Second Schedule of the Motor Vehicles Act, in addition to the above. Hence, the claimants are entitled to, for a total sum of Rs.3,06,600/- in this appeal. Hence, the legal representatives of the deceased appellants are entitled to get compensation of Rs.3,06,600/- and the 2nd respondent insurance company is liable to pay the same.

13. In the result, the Civil Miscellaneous Appeal is allowed by setting aside the findings in respect of

maintainability of the claim under Section 163-A of the Motor Vehicles Act, and also quantum of compensation under no fault liability. Hence, the compensation awarded by the Tribunal at Rs.50,000/- is enhanced to Rs.3,06,600/-. The 2nd respondent / Insurance Company shall deposit the compensation of Rs.3,06,600/- with interest at the rate of 7.5% per annum from the date of petition till the date of deposit together with interests and costs, less the amount already deposited, if any, within a period of one month, from the date of receipt of a copy of this Judgment.

14. The first appellant is the wife of the deceased is entitled to Rs.1,56,600/- and the 2nd and 3rd appellants / son and daughter respectively are entitled to Rs.75,000/- each, together with proportionate interest and costs and they are permitted to withdraw the above amount with accrued interest and costs, by making necessary application. No costs.

Sd/-
Assistant Registrar(RTI)

/True Copy/

Sub Assistant Registrar

To

1. The Motor Accidents Claims Tribunal,
   (IV Additional District Judge),
   Madurai.

2. The Manager,
   National Insurance Company Limited,
   35, North Usman Road,
   T.Nagar, Chennai – 17

Copy to : The Record Keeper,
Vernacular Section
Madurai Bench of Madras High Court.
Madurai. (2 copies)

+1 cc to M/S.Vijayakumari Natarajan, Advocate in SR.No.51851
+1 cc to M/S.J.S.Murali, Advocate in SR.No.51864

C.M.A(MD)No.76 of 2013
28.02.2018

PK/KK/SAR-2/26.03.2018 : 5P/7C