IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 05.02.2019

CORAM:

THE HON'BLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2205 of 2015
and M.P.No. 1 of 2015

United India Insurance Co. Ltd.,
Sillingi Buildings, New No.134/Old No.40-45,
Greams Road, Chennai-600 003. ..Appellant/2nd Respondent

Vs

1.S.Soundari

2.S.Yugaselvi

3.S.Saravanan ..Respondents 1 to 3/Petitioners

4.B.Thamium Ansari ...4th Respondent/1st Respondent

(R4 set exparte before the Tribunal
and hence, notice may be dispensed with)

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 25.04.2014 made in M.C.O.P.No.2185 of 2011 on the file of Motor Accidents Claims Tribunal, VI Small Causes Court, Chennai.

For Appellant : Mr.G.Udaya Sankar
For R1 to R3 : Mr.A.N.Viswanatha Rao

J U D G M E N T

This Civil Miscellaneous Appeal is filed against the award dated 25.04.2014 made in M.C.O.P.No.2185 of 2011 on the file of Motor Accidents Claims Tribunal, VI Small Causes Court, Chennai.

2.The appellant-Insurance Company is 2nd respondent in M.C.O.P.No.2185 of 2011 on the file of Motor Accidents Claims Tribunal, VI Small Causes Court, Chennai. The respondents 1 to 3 filed the above claim petition under Section 163-A of the Motor Vehicles Act, claiming a sum of Rs.10,00,000/- as compensation for the death of one M.Srinivasan, who died in the accident that took place on 30.03.2011. The Tribunal considering the pleadings, oral and documentary evidence, has held that the accident occurred due to rash and negligent driving by the driver of the car belonging to the 4th respondent, deceased died due to the injuries sustained by him in the accident and directed the appellant-Insurance Company to pay a sum of Rs.3,53,000/- as compensation to the respondents 1 to 3. Against the said award dated 25.04.2014 made in M.C.O.P.No.2185 of 2011, the appellant-Insurance Company has come out with the present appeal.

3.The learned counsel appearing for the appellant-Insurance Company contended that the Tribunal has failed to consider the evidence of C.W.1, R.W.1 & R.W.2 and documents filed before it and erroneously held that the accident occurred due to rash and negligent driving by the driver of the car and directed the appellant-Insurance Company to pay compensation. The notional income of the deceased fixed by the Tribunal is excessive. The deceased is a tort-feasor and the respondents 1 to 3 are not entitled for any compensation and prayed for setting aside the award of the Tribunal.

4.Per contra, the learned counsel appearing for the respondents 1 to 3 contended that the respondents 1 to 3 filed the claim petition under Section 163-A of the Motor Vehicles Act. As per Section 163-A of the Motor Vehicles Act, the respondents 1 to 3 need not plead and prove the negligence and the deceased died due to the injuries sustained by him in the accident. Though the respondents 1 to 3 need not plead and prove the negligence on the part of the driver of the car, they examined P.W.2-eye witness and proved that the accident occurred only due to rash and negligent driving by the driver of the car belonging to the 4th respondent, insured with the appellant. The Tribunal considering the age and avocation of the deceased, has awarded compensation under different heads, which are not excessive and prayed for dismissal of the appeal.

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

6.From the materials available on record, it is seen that the respondents 1 to 3 have filed the claim petition under Section 163-A of the Motor Vehicles Act. It is well settled that the victim or legal representatives of the deceased need not plead and prove negligence on the part of the driver of the offending vehicle. The Insurance Company is not entitled to raise objection on negligence. The scope of Section 163-A of the Act was considered by the Three-Judges Bench of the Hon'ble Apex Court 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]. 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:
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> > "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."
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> 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."

In view of the ratios in the above two judgments delivered by the Three-Judges Bench of the Hon'ble Apex Court, the claimants are entitled to compensation even though the deceased was responsible for the accident. Therefore, the finding of the Tribunal that the respondents 1 to 3 are entitled to compensation is valid.

7.As far as quantum of compensation is concerned, the Tribunal considering the age and avocation of the deceased, has fixed notional income of the deceased at Rs.40,000/- per annum, deducted 1/3rd towards personal expenses, applied multiplier 11 and awarded compensation towards loss of dependency. The deceased was aged 51 years at the time of accident and the multiplier 11 applied by the Tribunal is correct. The respondents 1 to 3 are entitled to compensation only towards loss of estate, loss of consortium and funeral expenses. The amounts awarded by the Tribunal under those heads are proper and the same are hereby confirmed. The respondents 1 to 3 are not entitled for any compensation towards loss of love and affection and a sum of Rs.50,000/- awarded by the Tribunal under this head is hereby set aside. Thus, the compensation awarded by the Tribunal is modified as follows:

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of pecuniary benefits	2,93,400	2,93,400	Confirmed
2.	Loss of estate	2,500	2,500	Confirmed
3.	Loss of consortium	5,000	5,000	Confirmed
4.	Loss of love and affection	50,000	-	Set aside
5.	Funeral expenses	2,000	2,000	Confirmed
	Total	3,52,900	3,02,900	Reduced by Rs.50,000/-

8.In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.3,52,900/- is hereby reduced to Rs.3,02,900/- with interest at the rate of 7.5% per annum from the date of petition till the date of realisation. The 1st respondent being the wife of the deceased is entitled to Rs.1,52,900/- and the respondents 2 and 3 are entitled to Rs.75,000/- each as compensation. The appellant-Insurance Company is directed to deposit the modified award amount now determined by this Court along 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 3 are permitted to withdraw the modified award amount along with interest and costs, less the amount if any, already withdrawn. The appellant-Insurance Company is permitted to withdraw the excess amount, if any lying in the deposit to the credit of M.C.O.P.No.2185 of 2011, if the entire award amount has already been deposited by them. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

-s/d-
Assistant Registrar(CS-IV)

True Copy

Sub-Assistant Registrar

kj/rst
To
1.The VI Judge
Motor Accidents Claims Tribunal,
VI Small Causes Court, Chennai.

2.The Section Officer
V.R.Section, High Court, Chennai.

+1 CC to Mr.G.Udaya Sankar, Advocate sr 10049.
+2 Ccs to Mr.A.N.Viswanatha Rao, Advocate sr 9855.

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and M.P.No. 1 of 2015

NRJK(CO)
SP(25/07/2019)