

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.12.2019

CORAM:

THE HON'BLE Mrs. JUSTICE V. BHAVANI SUBBAROYAN

C.M.A.No.2515 of 2013

1. Padmavathi (died)
2. Eswari
3. Ramesh

.. Appellants/Claimants

Vs.

1. K.Ganesh Prabhu,
2. Royal Sundaram @
Insurance Company Ltd.,

.. Respondents /Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988 against the judgment and decree dated 18.02.2013 made in M.C.O.P.No.479 of 2011, on the file of Sub Court, Tirupattur, Vellore District.

For Appellant : Mr.P.A.Sudesh Kumar

For R2 : Mr.M.Krishnamoorthy

For R1 : Set exparte

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the claimants who are the legal heirs of the deceased persons against the judgment and decree dated 18.02.2013 made in M.C.O.P.No.479 of 2011, on the file of Sub Court, Tirupattur, Vellore District.

2. The claimants have raised various grounds stating that the dismissal of MCOP is erroneous, illegal and unjustified and deserved to be interfered by this Court in the interest of justice. Further, it is stated that the Tribunal is erred in not considering the petition under Section 163-A that is under 'no fault liability' and also erred in mulcting the burden of detailing the manner of accident on the poor victimized petitioners. It is also alleged that the Tribunal is erred in dealing the claim petition filed under Section 163-A as if it is filed under Section 166 of the Motor Vehicle Act, 1988 and also exceeded in its jurisdiction in examining the issue of negligence and held that the driver alone is wholly responsible for the said

accident. Hence, the appellants prayed to set aside the award passed in MCOP.No.479 of 2011 dated 18.02.2013 on the file of the MACT/Sub-Court, Tirupattur, Vellore District.

3. The case of the appellants/claimants are that on 08.06.2011 at about 3 p.m near Wangai at Karmala, in between Nashik-Bijapur main road, the lorry bearing Registration No.KA04/B2340 to the 1st respondent's driver by its driver in the course of his employment under the 1st respondent towards Nashik from Bijapur and met with an accident and the said lorry was dashed against the right side of the another lorry bearing Registration No.TN 29/AX 2406 which was driven by its driver on the extreme left side of the road in front of the same direction and said lorry was tumbled down towards its left side. Due to the said accident, the said Padmanaban the driver of the 1st respondent sustained injuries all over the body and immediately after the accident the injured Padmanaban was taken to Nandadeep Hospital Ferguson and taken treatment and from there he was taken to Sassoon General Hospital, Pune and admitted as in-patient on 09.06.2011. But the injured Padmanaban died on 12.06.2011 in the said Session General Hospital Pune.

4. The case was registered by the Police of Karmala in C.C.No.238 of 2011 under Sections 279, 338 and 427 of I.P.C., and the same is pending for investigation. Due to the unavoidable circumstances, he died and hence, the legal heirs of the deceased/appellants prayed a sum of Rs.10 lakhs as compensation under Section 163 (A).

5. The 1st respondent has not filed any counter to deny the averments and he remained exparte.

6. The Court below has considered the claim petition alone in the absence of evidence, had come to the conclusion that there is no evidence on the side of the claimants through P.W1 to depose about the manner in which the accident has been occurred. Ex.P1 is the FIR and Ex.P2 is the translation copy. It is seen from the document Ex.P2 the driver of the lorry bearing Registration No.KA 04B 2340 was coming from his back side was trying to overtake his vehicle at the same time. The driver of the truck bearing No.KA.04B 2340 is solely responsible for the said accident. Hence, the Courts below has given a finding that the deceased driver was negligent in driving the vehicle and without seeing the vehicle coming into the opposite direction the driver made attempt to over take the lorry and due to the same the accident occurred thereby rejected the claim petition and dismissed the same.

7. Aggrieved the findings, the appellants/claimants have filed the present appeal.

8. I have heard the learned counsel appearing for the appellant and the learned counsel appearing for R2 and perused the materials available on record.

9. The learned counsel for the appellants placed reliance upon the Judgement of the Hon'ble Supreme Court reported in 2017 (2) TN MAC 753 (SC) in United India Insurance Co. Ltd., Vrs. Sunil Kumar and another wherein the relevant paragraph is extracted as follows:

"the 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 vehicles 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, namely, final compensation within a limited time frame on the basis of the structured formula is 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."

10. In view of the above, this Court is inclined to allow this Civil Miscellaneous Appeal. Considering the age of the driver is about 56 years, the multiplier 8 is taken to the victim. Accordingly, a sum of Rs.40,000/- has been awarded as personal expenses. $(40,000 \times 8 = 3,20,000)$. After deducting $\frac{1}{3}^{\text{rd}}$ of the salary from the personal expenses of Rs.1,06,666/-, an amount of Rs.2,13,334/- is arrived.

11. Accordingly, this Court is inclined to grant the compensation under the following heads:

S.No	Heads	Sum awarded Rs.
1	Loss pecuniary benefits	Rs.2,13,334/-
2	Loss of consortium	2,000
3.	Funeral Expenses	5,000
4.	Loss of Estate	2,500
	Total	2,22,834

12. Thus, the total amount of compensation to be awarded is fixed at Rs.2,22,834/- (Rupees two lakhs twenty two thousand eight hundred and thirty four only).

13. In the result, this Civil Miscellaneous Appeal is allowed. The Insurance Company is directed to deposit the total amount of Rs.2,22,834/- as compensation with interest at 7.5% per annum from the date of petition till the date of deposit, within a period of eight weeks from the date of receipt of a copy of this order. On such deposit, since the wife of the deceased is died on 25.09.2017, the remaining two claimants who are alive, are entitled to equal shares in the said amount. No costs.

Sd/-

Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

vum

To

The Subordinate Judge,
Motor Accident Claims Tribunal,
Tirupattur, Vellore District.

Copy To

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

+1cc to Mr.Krishnamoorthy, Advocate, S.R.No. 103618

+1cc to Mr.Sudesh Kumar, Advocate, S.R.No. 103422

C.M.A.No.2515 of 2013

MG(CO)

GN(26/08/2020)