IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.04.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1037 of 2018

Thaiyalnayagi ... Appellant

Vs.

1.J.Hariraj

2.United India Insurance Co. Ltd.,
Motor Third Party Claims Hub,
Silingi Building, 4th Floor,
No.134, Greams Road,
Chennai 600 006. ... Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award dated 12.09.2017, made in M.C.O.P.No.1248 of 2015, on the file of the Small Causes Court, Chief Judge, (Motor Accident Claims Tribunal), Chennai.

For Appellant : Mr.V.Suman for M/s.M.Malar

For R2 : Mr.S.Arunkumar

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant/claimant against the dismissal of the award dated 12.09.2017, made in M.C.O.P.No.1248 of 2015, on the file of the Small Causes Court, Chief Judge, (Motor Accident Claims Tribunal), Chennai.

2.The appellant/claimant filed M.C.O.P.No.1248 of 2015, on the file of the Small Causes Court, Chief Judge, (Motor Accident Claims Tribunal), Chennai, claiming a sum of Rs.40,00,000/- as compensation for the death of one Jeyaraman who died in the accident that took place on 22.04.2014.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the deceased himself is responsible for the accident and the accident had occurred due to his own negligence and dismissed the claim petition.

4.Against the said award dated 12.09.2017, made in M.C.O.P.No.1248 of 2015, the appellant has come out with the present appeal.

5.The learned counsel appearing for the appellant contended that the Tribunal erred in dismissing the claim petition on the ground that the deceased himself was a tort-feasor and claim petition filed under Section 163-A of the Motor Vehicles Act (hereinafter referred to as 'the Act') is not maintainable. The Tribunal failed to consider the judgment relied on by the appellant and without properly appreciating the well settled principle, dismissed the claim petition. The legal heirs of the tort-feasor are entitled to compensation as per Section 163-A of the Act. When the claim petition is filed under Section 163-A of the Act, the claimants need not plead and prove the negligence and prayed for setting aside the award of the Tribunal. The deceased was aged 65 years and was working as an Accountant in a private concern. The Tribunal ought to have awarded compensation as claimed by the appellant and prayed for allowing the appeal.

6.Per contra, the learned counsel appearing for the 2nd respondent-Insurance Company contended that the Hon'ble Apex Court has held that the tort-feasor or the legal heirs of the tort-feasor are not entitled to claim compensation against the Insurance Company. The insured cannot be a claimant as well as the recipient. The Tribunal has considered the judgment of the Hon'ble Apex Court and has rightly dismissed the claim petition and prayed for dismissal of the appeal.

7.Heard the learned counsel appearing for the appellant as well as the 2nd respondent and perused the materials available on record.

8.From the materials on record, it is seen that the claim petition was filed under Section 163-A of the Act. The said section is inserted for a speedy disposal of the claim petition and for the benefit of the claimants. As per the provisions of the said Section, the claimants need not plead and prove the negligence on the part of the driver. Earlier the Hon'ble Apex Court has held that the tort-feasor or legal heirs of the deceased tort-feasor are not entitled to claim compensation against the Insurance Company. Subsequently, the Three Judges Bench of the Hon'ble Apex Court in the judgment reported in 2017 (2) TN MAC 753 (SC) [United India Insurance Co. Ltd., Vs. Sunil

Kumar and another] has held that even a tort-feasor or legal heirs of the tort-feasor can maintain the claim petition against the Insurance Company claiming compensation. It was held that the Insurance Company cannot raise objections with regard to negligence when the claim petition is filed by the claimants under Section 163-A of the Act. The Hon'ble Apex Court has held that permitting the Insurance Company to raise such a plea would defeat the intention of the legislature for introducing Section 163-A of the Act. The relevant portion of the said Section judgments read as follows:

> "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."

9.Again the said issue came for consideration before the Hon'ble Apex Court in another Three Judges Bench and the view taken in 2017 (2) TN MAC 753 (SC) [United India Insurance Co. Ltd., Vs. Sunil Kumar and another] was endorsed in the judgment reported in the 2018 (2) TN MAC 149 (SC) [Shivaji and another Vs. Divisional Manager, United India Insurance Co. Ltd., and others]. The relevant paragraph of the said judgment is extracted hereunder:

"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."

10.In the above said judgments, the Hon'ble Apex Court has held that the tort-feasor or the legal heirs of the tort-feasor can maintain the claim petition against the Insurance Company under Section 163-A of the Act. In view of the ratios in the above two judgments delivered by the Three-Judges Bench of the Hon'ble Apex Court, the claimant is entitled to compensation even though he was responsible for the accident. The finding of the Tribunal that the claimant is not entitled to claim compensation is set aside and the 2nd respondent-Insurance Company is directed to pay the compensation.

11.As far as the quantum of compensation, the appellant has contended that the deceased was working as an Accountant in a private concern and was earning a sum of Rs.12,000/- per month. In the absence of any material evidence to prove the same, a sum of Rs.3,300/- is fixed as the notional income of the deceased. The deceased was aged 65 years at the time of accident. Applying the multiplier as per II Schedule of the Act, a sum of Rs.1,98,000/- [Rs.3,300/- x 12 x 5] is granted towards loss of dependency. The appellant/wife of the deceased is entitled to a sum of Rs.5,000/- towards loss of consortium, a sum of Rs.2,500/- for loss of estate and a sum of Rs.2,000/- towards funeral expenses. Thus, the compensation shall read as follows:

S. No	Description	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of dependency	1,98,000/-	Granted
2.	Loss of estate	2,500/-	Granted
3.	Funeral expenses	2,000/-	Granted

4.	Loss of consortium	5,000/-	Granted
	Total	2,07,500/-	

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12.In the result, the appeal is allowed and a sum of Rs.2,07,500/-is awarded to the appellant along with interest at the rate of 7.5% per annum from the date of petition till the date of deposit and costs as compensation. The 2nd respondent-Insurance Company is directed to deposit the award amount along with interest and costs, within a period of six weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P.No.1248 of 2015. On such deposit, the appellant is permitted to withdraw the award amount along with interest and costs, by filing necessary applications before the Tribunal. No costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

gsa

To

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

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

+1cc to M/s.S.Arunkumar, Advocate Sr.42884
+1cc to M/s.M.Malar, Advocate Sr.43021

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vsn II[co]
srg 27/08/2020