IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.12.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.904 of 2015

1.Rabiya
2.Minor Yogeshkumar
(Minor rep. by next friend mother/
1st appellant)

3.Perumal
4.Katteri .. Appellants /Petitioners 1 to 4

Vs.

1.Tamilnadu State Transport Corporation
Madhurai, Dindigul Region
Represented by its Managing Director
Bye pass road, Collectorate Post
Dindugal
Dindugal District.

2.S.Sakthivel

3.National Insurance Company
Branch Office
73, Perundurai Office
Near Collector Office
P.B.No.911 Erode. .. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 23.12.2014 made in M.C.O.P.No.29 of 2013 on the file of Motor Accident Claims Tribunal, Special District Court, Krishnagiri.

For Appellants	:	Mr.P.Mani
For R1	:	Mr.V.Vasanthakumar
For R3	:	No appearance
R2	:	Not Ready in Notice

J U D G M E N T

The Civil Miscellaneous Appeal is filed challenging the order of dismissal dated 23.12.2014 made in M.C.O.P.No.29 of 2013 on the file of Motor Accident Claims Tribunal, Special

District Court, Krishnagiri.

2.The appellants are claimants in M.C.O.P.No.29 of 2013 on the file of Motor Accident Claims Tribunal, Special District Court, Krishnagiri. They filed the said claim petition under Section 163(A) of the Motor Vehicles Act claiming a sum of Rs.4,17,500/- as compensation for the death of one Suresh @ Sureshkumar, who died in the accident that took place on 01.06.2009.

3.According to the appellants, while the deceased was riding in the motorcycle belonging to the 2nd respondent insured with the 3rd respondent and trying to overtake the bus belonging to the 1st respondent, touched the back wheel of the bus, fell down from the motorcycle, sustained injuries and died on the spot. The accident occurred only due to negligence on the part of the driver of the bus belonging to the 1st respondent. Therefore, the appellants have filed the above claim petition claiming compensation.

4.The 1st respondent filed counter statement denying that the accident occurred only due to negligence on the part of the driver of the bus. The 1st respondent has stated that when the deceased tried to overtake the bus at high speed, he lost his control and scratched at the back side of the bus and thereby lost his balance, fell down on the ground and sustained injuries. The accident occurred only due to rash and negligent act of the deceased. The deceased himself has invited the accident. FIR was registered only against the deceased. At the time of accident, the deceased did not possess valid driving license. Hence, the 1st respondent is not liable to pay any compensation.

5.The 2nd respondent, owner of the motorcycle, remained exparte before the Tribunal.

6.The 3rd respondent filed counter statement, denied the manner of accident and contended that FIR itself reveals that the deceased has consumed alcohol and has driven the motorcycle in an intoxicated condition in a rash and negligent manner and hit against the back side of the bus belonging to the 1st respondent/Transport Corporation. The postmortem report of the deceased also confirms that he has consumed alcohol and caused the accident on his own fault. There cannot be any claim for such drunken drive and own fault of rider even under Section 163 (A) of the Motor Vehicles Act. The appellants have not produced the driving license of the deceased. The deceased was under the influence of alcohol and therefore he has violated the policy condition. Hence, the appellants are not entitled for any compensation under Section 163(A) of the Motor Vehicles Act.

7.Before the Tribunal, the 1st appellant, wife of the deceased examined herself as PW1 and one Prabhudos, eyewitness, was examined as PW2 and marked five documents as Exs.P1 to P5. On the side of the respondents, one Rajasekaran, officer of the Insurance Company was examined as RW1 and driver of the bus was examined as RW2 and marked three documents as Exs.R1 to R3.

8.The Tribunal considering the pleadings, oral and documentary evidence and judgment of the Hon'ble Apex Court reported in 2012(1) TNMAC (SC) page no.1 (National Insurance Company Limited Vs. Sinitha and others), dismissed the claim petition.

9.Against the order of dismissal dated 23.12.2014 made in M.C.O.P.No.29 of 2013, the appellants have come out the present appeal.

10.The learned counsel appearing for the appellants/claimants contended that the Tribunal has failed to see that the accident occurred only due to rash and negligent driving by the driver of the bus as he has swerved the bus towards right side, while the deceased tried to over take the bus. The Tribunal erred in disbelieving the evidence of PW2 eyewitness on the ground that he has failed to produce the documents with regard to his employment. The Tribunal erred in relying on the evidence of RW2/driver of the bus and FIR. The Tribunal has failed to note that a person, who lodged the complaint and the police officer, who registered the complaint, were not examined. The Tribunal has failed to note that the complaint was lodged on the next day of the accident in order to safeguard the driver of the bus. The Tribunal erred in not accepting the evidence of PW2, who deposed that the accident occurred, when the driver of the bus swerved the bus to the right hand side. The appellants have filed claim petition under Section 163(A) of the Motor Vehicles Act. The Tribunal ought to have awarded compensation considering the facts and circumstances of the case and prayed for allowing the appeal.

11.The learned counsel appearing for the 1st respondent contended that the accident occurred only due to rash and negligent riding by the deceased/rider of the motorcycle. Considering the evidence of PW2 in its entirety, the Tribunal by giving valid reason disbelieved the said evidence. The 1st respondent has examined the driver of the bus as RW2 and proved that the driver of the bus was not responsible for the accident and prayed for dismissal of the appeal.

12.Though notice was served on the 3rd respondent/Insurance Company and their name is printed in the cause list, there is no representation on behalf of them either in person or through counsel.

13.Heard the learned counsel appearing for the appellants as well as the learned counsel appearing for the 1st respondent and perused all the materials available on record.

14.From the pleadings and evidence of PW1 and FIR, it is seen that the accident has occurred only due to rash and negligent riding by the deceased. Only PW2, who is alleged to be the eyewitness has deposed that the accident has occurred due to rash and negligent driving by the driver of the bus as he swerved the bus towards right side, while the deceased was trying to overtake the bus. The said evidence was not believed by the Tribunal, as PW2 hails from same village of the deceased and PW2 was working 300 kilometers away from the place where the deceased was working. P.W.2 has not produced any documents to substantiate his contention that he was co-worker of the deceased. The Tribunal has given valid reason for disbelieving the evidence of PW2. FIR was lodged by one Vijayakumar, who is co-worker of the deceased and traveled as a pillion rider with the deceased before they were having lunch. The appellants have not examined the said Vijayakumar to disprove the contents of FIR and to substantiate their claim that the complaint was lodged on the next day.

15.Considering all the materials available on record, it is seen that the accident occurred only due to rash and negligent riding of the motorcycle by the deceased. The appellants have filed claim petition under Section 163(A) of the Motor Vehicles Act. As per the said Section, the claimants need not prove the negligence. The Tribunal has dismissed the claim petition based on the judgment of the Hon'ble Apex Court reported in 2012(1) TNMAC (SC) (National Insurance Company Limited Vs. Sinitha and others). Subsequent to Sinitha's case, the issue whether the victim or representative of the deceased can claim compensation against the Insurance Company, when the victim or deceased was tort-feasor, came up for consideration before the Three-Judges Bench of the Hon'ble Apex Court reported in 2017 (2) TN MAC 753 (SC) [United India Insurance Co. Ltd., Vs. Sunil Kumar and another], wherein it was held that even a tort-feasor or legal representatives of the tort-feasor can claim compensation against the Insurance Company in the claim petition filed under Section 163(A) of the Motor Vehicles Act. The relevant paragraphs are extracted hereunder:

> "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:

> "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."

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 negligence on the part of the victim."

The above said judgment was considered by the subsequent Three-Judges Bench in the judgment of the Hon'ble Apex Court reported in 2018 (2) TN MAC 149 (SC) [Shivaji and another Vs. Divisional Manager, United India Insurance Co. Ltd., and others]. The relevant paragraphs are 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."

In view of the ratios in the above two judgments delivered by the Three-Judges Bench of the Hon'ble Apex Court, the appellants/claimants are entitled to compensation even though the deceased was responsible for the accident. Therefore, the dismissal of the claim petition by the Tribunal following Sinitha's case is erroneous and the judgment of the Tribunal dated 23.12.2014 made in M.C.O.P.No.29 of 2013 is liable to be set aside and it is hereby set aside. The 3rd respondent/Insurance Company as insurer of the motorcycle is liable to pay compensation to the appellants.

16.As far as quantum of compensation is concerned, the appellants/claimants are entitled to compensation under Section 163(A) of the Motor Vehicles Act. The appellants have contended that the deceased was working as JCB operator and was earning a sum of Rs.3,000/- per month. The respondents have not let in any contra evidence to disprove the same. The deceased was aged 30 years at the time of accident. As per II Schedule of the Section 163(A) of Motor Vehicles Act, 1988, the multiplier applicable for age 30 is '18'. After deducting 1/4th towards personal expenses of the deceased, the compensation towards loss of dependency comes to Rs.4,86,000/- (Rs.3,000/- X 12 X 18 X 3/4). Since the claim petition is filed under Section 163(A) of the Motor Vehicles Act, the appellants are entitled to a sum of Rs.2,500/- towards loss of estate, Rs.5,000/- towards loss of consortium and Rs.2,000/- towards funeral expenses, break-up as follows:

S.No	Description	Amount awarded by this Court (Rs)
1.	Loss of dependency	4,86,000
2.	Loss of estate	2,500
3.	Loss of consortium	5,000
4.	Funeral expenses	2,000
	Total	Rs.4,95,500/-

17.In the result, the award of the Tribunal dismissing the claim petition is set aside and this Civil Miscellaneous Appeal is allowed. A sum of Rs.4,95,500/- is awarded as compensation together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellants are directed to pay necessary Court fee, if any on the compensation awarded by this Court. The appellants 1 and 2, being wife and son of the deceased respectively are entitled to a sum of Rs.1,72,750/- each and the appellants 3 & 4 being parents of the deceased are entitled to a sum of Rs.75,000/- each as compensation. The 3rd respondent/Insurance Company is directed to deposit the award amount now determined by this Court, along with interest and costs, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the appellants 1, 3 and 4 are permitted to withdraw their respective share of the award amount now determined by this Court along with proportionate interest and costs. The share of the minor/2nd appellant is directed to be deposited in any one of the Nationalised Banks till the minor attains majority. The 1st appellant being mother of the 2nd appellant is permitted to withdraw the accrued interest once in three months for the welfare of the minor. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

The Special District Judge
The Motor Accident Claims Tribunal
Krishnagiri.

Copy To

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

+1cc to Mr.P.Mani, Advocate, S.R.No. 103489
+1cc to Mr.Vasantha Kumar, Advocate, S.R.No. 103906

C.M.A.No.904 of 2015

VG I(CO)
GN(04/02/2021)