IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 28.08.2018

Pronounced on : 14.03.2019

CORAM :

THE HONOURABLE MR. JUSTICE M.V.MURALIDARAN

C.M.A.No.1461 of 2018

and

CMP.No.11661 of 2018

The Reliance General Insurance Co., Ltd.,
Chennai
Policy No.120340233600600. ..Appellant/2nd Respondent

Vs.

1.Chitra Devi

2.Minor R.Deepa Lakshmi

3.Minor R.Tiruppathi

4.Minor R.Yogeswari

5.R.Dhanalakshmi

6.M.Rajendran ..Respondents 1 to 6/Petitioners 1 to 6

(2 to 4 minors are rep. by
their mother NF & NG, R.Chitra Devi)

7.S.Venkatesan ..7th Respondent/ 1st Respondent

Prayer:- Civil Miscellaneous Appeal filed under Section 173 of M.V.Act against the judgment and decree dated 24.08.2017 made in M.C.O.P.No.81 of 2012 on the file of the Motor Accidents Claims Tribunal, Subordinate Court, Tiruttani.

For Appellant : Mr.S.Arunkumar

For Respondents: Mr.K.Varadhakamaraj
(for R1 to R6)

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the judgment and decree dated 24.08.2017 made in M.A.C.T.O.P.No.81 of 2012 on the file of Motor Accident Claims Tribunal, Subordinate Court, Tiruttani.

2.The Appellant is 2nd Respondent, the 7th Respondent is 1st Respondent, Respondents 1 to 6 are Petitioners 1 to 6 in M.A.C.T.O.P.No.81 of 2012, on the file of Motor Accident Claims Tribunal, Subordinate Court, Tiruttani. According, to the 1st Respondent / wife of the deceased her husband was working under the 7th Respondent as driver and while he was driving Goods Auto bearing Registration No.TN-02-W-5371 on 26.07.2011 at about 17.45 hours near Meenakshi Polytechnic, Gandhi Road, Sankar Nagar, the same was capsized due to over iron load in auto and the 1st Respondent husband died due to grievous injuries on the spot itself. The deceased was 28 years at the time of death and working as driver under the 7th Respondent and earning Rs.10,000/- per month. The 1st Respondent is wife of the deceased, Petitioner Nos.2 to 4 are minor children of the deceased, Petitioner Nos.5 and 6 are parents of the deceased and 7th Respondent is owner of Goods Auto bearing Registration No.TN-02-W-5371 and Appellant/2nd Respondent is insurer of Goods Auto bearing Registration No.TN-02-W-5371. The Respondents 1 to 6/Petitioners claim a sum of Rs.10,00,000/- as compensation under section 163(A) of M.V.Act. The 7th Respondent/owner of vehicle is remained exparte.

3.The Appellant /insurance company filed counter statement and denied various allegations made by the Respondents/Petitioners 1 to 6 and pleaded that the accident was happened due to rash and negligent driving of the 1st Respondent husband and the deceased himself tortfeasor hence claims under Section 163(A) is not maintainable prayed for dismissal of claim petition.

4.Before the Tribunal, the 1st Respondent /1st petitioner wife of the deceased was examined as PW1 and eyewitness was examined as PW2 and marked Documents as Ex.P1 to Ex.P4. On behalf of 2nd Respondent/Insurance company examined Thiru.Singh as RW1 and Mr.Rajeshkumar as RW2 and Marked Documents ExR1 and Ex.R2.

5.The Tribunal considering the pleadings ,oral and documentary evidence and evidence of PW's and RW's, came to the conclusion that though the accident occurred due to rash and negligent driving of the appellant husband, he being the tortfeasor since the claims made under section 163(A) the respondents are liable to pay compensation and allowed the claim for a sum of Rs.9,19,000/- with 7.5% interest and direct the insurer/appellant recover the compensation amount from owner of the vehicle/7th Respondent.

6.Against the said award dated 24.08.2017 made in M.A.C.T.O.P.No.81 of 2014, on the file of Motor Accident Claims Tribunal, Subordinate Court Tiruttani, the present Civil

Miscellaneous Appeal is prepared by the appellant/Insurance Company.

7.The learned counsel for the appellant/insurance company submitted that when there is negligence on the side of 1st Respondent husband and himself tortfeasor, though the claim made under section 163(A) and when the deceased not having valid license for driving the above said vehicle , the tribunal considered all the materials in a proper perspective manner and ought to have dismissed the claim petition and prayed for allow the above Civil Miscellaneous Appeal.

8.The learned counsel for the respondents 1 to 6 submitted that since the claim made under section 163(A) the Tribunal rightly allowed the claim without going into the negligence factor as per proviso of M.V.Act under Section 163(A) and cited rulings in favour of his contentions United India Insurance Co. Ltd. Vs. Sunil kumar (2017 (2) TNMAC 753 (SC)) and another rendered by the Hon'ble Apex Court and Cholamandalam MS General Insurance Co. Ltd. Vs. Amutha and others (2018 (1) TNMAC 135 (Madurai Bench)) held that Section 163(A) introduced to provide compensation within a limited time frame on the basis of structured formula and permitting insurer to raise defence of negligence would bring proceedings under section 163(A) at par with proceeding under section 166 and defeat very legislative intent and in proceeding under section 163(A), it is not open to Insurer to raise defence of negligence on the part of victim. Hence , the claim allowed by the tribunal is correct and further contended that no license on the date of accident by deceased 1st Respondent husband and it is violation of policy condition as per M.V.Act and cited judgment in his favour (2015(2) TN MAC 274) Madurai Bench as per above rulings pay and recover order granted by the Tribunal is correct.

9.I heard Mr.S.Arunkumar, learned counsel for the appellant and Mr.K.Varadha Kamaraj, learned counsel for the respondents 1 to 6 and perused the materials available on record.

10.I went through entire evidence of appellant / 2nd Respondent insurance company and Respondents 1 to 6 /Petitioners 1 to 6, I find is correct allowed the claim when the claim made by appellant under 163(A) and as per provision of 163(A) M.V.Act the appellant need not prove negligence and they entitled compensation as per structured formula and I find the claim rightly allowed by tribunal as per rulings in United India Insurance Co. Ltd. Vs Sunil kumar (2017 (2) TNMAC 753 (SC)) and another rendered by the Hon'ble Apex Court and Cholamandalam MS General Insurance Co. Ltd. Vs. Amutha and others (2018 (1) TNMAC 135 (Madurai Bench)) held that Section 163(A) introduced to provide compensation within a limited time frame on the basis of structured formula and permitting insurer to raise defence of negligence would bring proceedings under section 163(A) at par with proceeding under section 166 and defeat very legislative intent and in proceeding under section 163(A), it is not open to Insurer to raise defence of negligence on part of victim. Hence, aforesaid discussions and rulings I find the claim allowed by the tribunal is correctly held that the Appellant is liable to pay compensation on behalf of the 7th Respondent. Since the deceased not having license it is only violation policy conditions I agree with citation cited by the counsel for Respondents 1 to 6 Citation that (2015(2) TN MAC 274) Madurai bench held that

> "we have construed and determined the scope of sub clause (ii) of Sub section (2) of section 149 of the Act. Minor breaches of license conditions, such as want of medical fitness certificate, requirement about age of the driver and the like not found to have been the direct cause of the accident, would be treated as minor breaches of inconsequential deviation in the matter of use of vehicles, such minor and inconsequential deviations with regard to licensing conditions would not constitute sufficient ground to deny the benefit of coverage of insurance to the third parties".

Therefore, I am of the view that the insurance company/appellant has to pay the compensation amount to claimants and they could recover the same from the insured in the manner known to law.

11.The Tribunal calculated the loss of dependency at Rs.4,59,000/- as under:

"2250 X 12 X 17 = Rs.4,59,000/- "

The said calculation appears to be incorrect and if loss of dependency concern for legislative intent and purpose was to provide for payment of final compensation to a class of claimant I find it is just and reasonable Annual income should be fixed Rs.40,000/- per annum. Since the deceased age 27 years as per Ex.P5 (driving license), I fixed multiplied 17 as per the Hon'ble Apex Court ruling in Sarala Varma case. Since the Respondents 1 to 6 are dependents I have deduct 1/5th income for personal expenses of the deceased and if we calculate Rs.40,000 X 17 X 5/6 and after deduction would come to Rs.5,66,667/-. Hence, in this appeal I fixed loss of dependency Rs.5,66,667/-.

12.I award Rs.40,000/- towards loss of consortium of appellant as per the Hon'ble Apex Court verdict in National Insurance Company Ltd. Vs. Pranay Sethi.

13. I award Rs.2,00,000/- towards loss of love and affection of Respondents 2 to 5 awarding Rs.40,000/- each since they lost their affectionate father and son.

14. I award Rs.15,000/- towards funeral expenses as per the Hon'ble Apex Court verdict in National Insurance Company Ltd. Vs. Pranay Sethi.

15. I award Rs.15,000/- towards loss of estate as per the Hon'ble Apex Court verdict in National Insurance Company Ltd. Vs. Pranay Sethi.

16.In view of above discussions, in the present appeal the compensation of Rs.8,36,667/- with 7.5% arrived by me as under:-

Loss of dependency	= Rs.5,66,667/-
Loss of consortium to the 1st Respondents	= Rs. 40,000/-
Love and affection to the Respondents 2 to 6	= Rs.2,00,000/-
Loss of Estate	= Rs. 15,000/-
Funeral Expenses	= Rs. 15,000/-
Total	= Rs.8,36,667/-

17.The total compensation of Rs.8,36,667/- is apportioned to the

Respondents 1 to 6 claimants as under:-

1st Respondent	= Rs.3,00,000/-
Respondents 2 to 4 Each Rs.1,25,000/- X 3	= Rs.3,75,000/-
5th Respondent/Claimant	= Rs. 81,667/-
6th Respondent/Claimant	= Rs. 80,000/-

18.For the foregoing reasons, this Civil Miscellaneous Appeal is partly allowed and the award of the tribunal is modified as follows:-

The claimants will be entitled to a sum of Rs.8,36,667/- as compensation with proportionate interest and costs as awarded by the tribunal. The Appellant/Insurance Company is directed to deposit modified award amount along with 7.5% interest from the date of petition till the date of deposit within a period of six weeks from the date of receipt of a copy of this order and the appellant is permitted to recover the award amount from the owner of Vehicle namely, the 7th Respondent. On such deposit, the Respondents 1 and 5 to 6 are permitted to withdraw their respective share along with interest and Minor Respondents 2 to 4 share amount should be invested in a nationalised bank till they attaining majority. There will be no order as to costs. Consequently, connected miscellaneous petition is also closed.

vs

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

To
The Motor Accidents Claims Tribunal,
Subordinate Court, Tiruttani.

+1cc to Mr.Arun Kumar, Advocate, SR.No.24287
+1cc to Mr.K.Varadha Kamaraj, Advocate, SR.No.23910

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Kak(04/07/2019)