

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 01.11.2018

Delivered on : 12.03.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

C.M.A.No.2127 of 2018

Kalaivani

...Appellant

Vs

1.S.R.Gopalakrishnan

2.Iffco Tokio General Insurance Co. Ltd.,
Iffco Sadan CI District Centre, Saket,
New Delhi - 110017.

3.Pushpa

4.Balakrishnan

...Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of M.V. Act, 1988, against the decree and judgment dated 24.01.2018 made in M.C.O.P.No.486 of 2014 on the file of the Motor Accident Claims Tribunal (Chief Small Causes Court), Chennai.

For Appellant : Mr.Varadha Kamaraj

For Respondents: Mr.C.R.Krishnamoorthy (for R2)

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the judgment and decree Dated 24.01.2018 made in M.A.C.T.O.P.NO.486 of 2014 on the file of Motor Accident Claims Tribunal, in the Court of Small Causes, Chennai.

2.The Appellant -Claimant is the Petitioner she is wife of the deceased. The 1st Respondent is Owner of Vehicle bearing Registration No.TN-05-U-7381, 2nd Respondent is Insurer of Vehicle bearing Registration No.TN-05-U-7381, 3rd and 4th Respondents are parents of the deceased in M.A.C.T.O.P.NO.486 of 2014, on the file of Motor Accident Claims Tribunal, in the Court of Small Causes, Chennai. According to the Appellant/petitioner her husband was riding a Motor Cycle bearing Registration No.TN-05- U-7381 on 17.9.2009 at about 23.30.hours near Chinnapannamgadu, Nellore District NH-5 Salai,

while so an unknown vehicle driven by its driver and rash and Negligent manner from opposite direction to avoid the accident petitioner/appellant husband applied sudden break, but appellant husband lost its control and the appellant husband fall from bike and died due to grievous injuries on the spot. The deceased was 25 years at the time of death and working as carpenter and earning Rs.10,000/- per month. The Respondents 3 and 4 are parents of the deceased and 1st Respondent is owner of Motor Cycle bearing Registration No.TN-05- U-7381 and 2nd Respondent is insurer of Motor Cycle bearing Registratio No.TN-05- U-7381. The appellant claim a sum of Rs.3,00,000/- as compensation under section 163(A) of M.V. Act. The 1st, 3rd and 4th Respondents are remained exparte.

3.The 2nd Respondent/insurance company filed counter statement and denied various allegations made by the appellant and pleaded the accident happened due to rash and negligent driving of the appellant husband and denied the age and income of the deceased.

4.Before the Tribunal, the appellant /petitioner examined as PW1 and eyewitness examined as PW2 and marked 11 Documents as Exs.P1 to P8. On behalf of 2nd Respondent/Insurance company one Durai examined as RW1 and copy of insurance policy marked as Ex.R1.

5.The tribunal considering the pleadings ,oral and documentary evidence and evidence of PW1 and RW1 ,came to the conclusion that the accident occurred only due to rash and negligent driving of the appellant husband, since the accident happened due to appellant husband own negligence, he being the tort feasor dismissed the claim petition.

6.Against the said award dated 24.01.2018 made in M.A.C.T.O.P.No.486 of 2014, the present Civil Miscellaneous appeal prepared by the appellant.

7.The learned counsel for the appellant contended that when the claim made under section 163(A) the tribunal without going to negligence factor and allow the claim as prayed for as per proviso of M.V.Act and cited rulings infavour 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 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 the claim dismissed by the tribunal is

unsustainable and the claim to be allowed as prayed for.

8.The learned counsel for the 2nd respondent submitted that when there is negligence on the side of appellant husband and himself tort feisor, the tribunal considered all the materials is proper perspective and rightly dismissed the claim petition and prayed for dismissal of the above Civil Miscellaneous Appeal.

9.I heard Mr.K.Varadha Kamaraj, learned counsel for the appellant and Mr.C.R.Krishnamoorthy, learned counsel for the 2nd Respondent and perused the materials available on record.

10.I went through entire evidence of appellant and 2nd Respondent insurance company I find the order of dismissal of claim petition is not correct by the Tribunal, 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 she entitled compensation as per structured formula and I find the claim to be allowed and order of tribunal to be set aside 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 raised defence of negligence on the part of victim. Hence, the aforesaid discussions and rulings I find the claim dismissed by the tribunal is not correct and set aside the order of tribunal and allow the claim of appellant.

11. As far as income concern the 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 25 years as per Ex.P5(driving license) I fixed multiplied 18 as per the Hon'ble Apex Court ruling in the case of Sarala Varma. Since the appellant and Respondents 3 and 4 are dependents I have deduct 1/3rd income for personal expenses of the deceased and if we calculate $40000 \times 18 \times \frac{1}{3}$ and after deduction would come to Rs.4,80,000/-.

12.This Court 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.This Court award Rs.50,000/- towards loss of love and affection of Respondents 3 and 4 awarding Rs.25,000/- each since they lost their affectionate son.

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

15.This Court 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.6,00,000/- with 7.5% arrived by me as under:

Loss of dependency	= Rs.4,80,000/-
Loss of consortium	
to the 1 st Respondents	= Rs. 40,000/-
Love and affection	
to the Respondents 2 & 3	= Rs. 50,000/-
Loss of Estate	= Rs. 15,000/-
Funeral Expenses	= Rs. 15,000/-

Total	= Rs.6,00,000/-

17.The total compensation of Rs.6,00,000/- is apportioned to the Appellant and Respondents 3 and 4 claimants as under:

Appellant /Claimant	= Rs.4,00,000/-
3 rd Respondent/Claimant	= Rs.1,00,000/-
4 th Respondent/Claimant	= Rs.1,00,000/-

18.With the above detailed findings, this Civil Miscellaneous Appeal is allowed. No costs. The learned counsel for the 2nd Respondent is directed to deposit the award amount along with 7.5% interest from the date of petition till the date of deposit within a period six weeks from the date of receipt of a copy of this order. On such deposit, the Appellant and Respondents 3 and 4 are permitted to withdraw their above said share along with interest.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

vs

To

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

+1cc to Mr.K.Varadha Kamaraj, Advocate, S.R.No.23101

+1cc to Mr.C.R.Krishnamurthy, Advocate, S.R.No.23069

C.M.A.No.2127 of 2018

VBA (CO)

RRS (27/05/2019)



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