IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.04.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.234 of 2018

1.Santhi
2.Manoharan .. Appellants/Petitioners

Vs.

1.Manoharan
2.United India Insurance Company Limited,
Branch Office-II, Salem77,
Oriental Complex,
Salem District - 636 001. .. Respondents/Respondents

(R1 remained exparte before Tribunal and notice may be dispensed with)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 22.11.2017 made in M.C.O.P.No.169 of 2016 on the file of the Motor Accident Claims Tribunal, I Additional District Court, Erode.

For Appellants : Mr.T.S.Arthanareeswaran
For R2 : Mr.C.Paranthaman

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the award dated 22.11.2017 made in M.C.O.P.No.169 of 2016 on the file of the Motor Accident Claims Tribunal, I Additional District Court, Erode.

2.The appellants are the claimants in M.C.O.P.No.169 of 2016 on the file of the Motor Accident Claims Tribunal, I Additional District Court, Erode. They filed the above said claim petition, claiming a sum of Rs.10,00,000/- as compensation for the death of their son viz.,Dhivakar, who died in the accident that took place on 25.10.2015.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent riding by the deceased and dismissed the claim petition as the petitioners filed claim petition under Section 163 (A) of the Motor Vehicles Act,1988.

4.Challenging the award of the Tribunal dismissing the claim petition dated 22.11.2017 made in M.C.O.P.No.169 of 2016, the appellants have come out with the present appeal.

5.The learned counsel appearing for the appellants contended that the Tribunal erred in dismissing the claim petition, on the ground that accident has occurred due to rash and negligent riding by the deceased, rider of the motorcycle, who died in the accident, when the claim petition was filed under Section 163 (A) of the Motor Vehicles Act, 1988. The Tribunal failed to see that the first respondent, owner of the motorcycle has paid extra premium to cover the risk of owner and rider of the motorcycle. The Tribunal without considering the materials on record, erroneously dismissed the claim petition and prayed for setting aside the award of the Tribunal and also for awarding compensation for the death of son of the appellants.

6.Per contra, Mr.C.Paranthaman, learned counsel appearing for the second respondent-Insurance Company contended that the accident has occurred only due to rash and negligent riding by the deceased, who is the son of the owner of the motorcycle/1st respondent and insured. The insurer is liable to indemnify the claim made against the insured. The insured cannot be the claimant as well as the recipient. In any event, the appellants have failed to prove the avocation and income of the deceased. The Tribunal dismissed the claim petition by giving valid reason and in support of his contention, he relied on the judgments of the Hon'ble Apex Court reported in 2009 ACJ 2020 [Ningamma and another Vs. United India Insurance Co. Ltd.,] and 2009 (2) SCC 417 [New India Assurance Company Ltd., Vs. Sadanand Mukhi and others].

7.Heard the learned counsel appearing for the appellants as well as the second respondent and perused the entire materials on record.

8.From the materials available on record it is seen that the appellants have filed claim petition under Section 163 (A) of Motor Vehicles Act, 1988. This Section was inserted with effect from 14.11.1994 by Act 54 of 1994. This Section was incorporated for speedy disposal of the claim petition. As per this Section, the claimant need not plead and prove the negligence on the part of the rider of the motorcycle or owner of the motorcycle. Whether injured claimant or the legal heirs of the deceased can maintain the claim petition under Section 163 (A) of Motor Vehicles Act, 1988, when injured claimant or deceased was responsible for the accident was considered in a number of judgments by this Court as well as the Hon'ble Apex Court. The Hon'ble Apex Court in the judgment reported in 2012 (2) SCC 356, National Insurance Company Ltd. Vs. Sinitha & Others, held that when the rider of the motorcycle was responsible for the accident, he or his legal heirs cannot claim compensation under Section 163 (A) of the Motor Vehicles Act, 1988. In the said judgment of the Hon'ble Apex Court, it has been held that when a person borrows the motorcycle from owner, he steps into the shoes of the owner. It was also held that insured cannot be the claimant as well as the recipient. Subsequent to the said judgments, the Hon'ble Apex Court in three Judges Bench reported in 2017 (2) TN MAC 753 (SC) [United India Insurance Co. Ltd., Vs. Sunil Kumar and another], held that even if the claimant or the legal representatives of the deceased are responsible for the accident, the claim petition filed under Section 163 (A) can be maintained by the injured claimant or the legal representatives of the deceased, who was responsible for the accident. In paragraphs 7, 8 and 9 it has been held 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."

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."

This issue again came for consideration before the Hon'ble Apex Court in another 3 Judges Bench of the Hon'ble Apex Court and the view taken in 2017 (2) TN MAC 753 (SC) [United India Insurance Co. Ltd., Vs. Sunil Kumar and another], case was endorsed in the judgment reported in 2018 (2) TN MAC 149 (SC) [Shivaji and another Vs. Divisional Manager, United India Insurance Co. Ltd., and others], in paragraph 5, wherein it has been held as follows:

> "...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. v. Sunil Kumar & Anr.,1 wherein it was held that to permit a defence of negligence of the claimant by the insurer and/or to understand Section 163A 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 163A of the Act, it would "bring a proceeding under Section 163A 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 163A of the Act, the insurer cannot raise any defence of negligence on the part of the victim to counter a claim for compensation."

9.In view of the above two judgments, even though the accident has occurred due to rash and negligent riding by the son of the appellants, the appellants can maintain the claim petition under Section 163 (A) of Motor Vehicles Act, 1988 and the second respondent is not entitled to raise objection with regard to negligence and that second appellant/insurer cannot be the claimant as well as the recipient. The insurance policy issued by the second respondent-Insurance Company was in force at the time of accident. From the award of the Tribunal, it is seen that the Tribunal has held that the policy issued by the second respondent is comprehensive policy and the same was in force at the time of accident. The second respondent-Insurance Company contended that deceased did not possess driving license at the time of accident. The second respondent marked Ex.R3-notice issued to the appellants. The second respondent has not produced any acknowledgment to show that the said notice was received by the appellants. The second respondent has not examined any official from R.T.O. to prove that the deceased did not possess driving license at the time of accident. The Tribunal erroneously held that deceased did not possess driving license at the time of accident. The said finding is not based on any materials on record.

10.For the above reason, the award of the Tribunal dismissing the claim petition is liable to be set aside and is hereby set aside. The second respondent-Insurance Company is liable to pay the compensation.

11.As far as quantum of compensation payable to the appellants are concerned, the appellants contended that the deceased was working as pump operator in the municipality and was earning a sum of Rs.40,000/- per annum. The second respondent has not let in any contra evidence to disprove the said contention. The deceased was aged 23 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 23 is '17'. After deducting 1/3rd towards personal expenses of the deceased, the compensation towards loss of dependency comes to Rs.4,53,333.33 rounded off to Rs.4,53,334/- [Rs.40,000/- X 17 X 2/3]. The appellants are entitled to a sum of Rs.2,500/- towards loss of estate and Rs.2,000/- towards funeral expenses. The compensation to the appellants are as follows:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of dependency	-	4,53,334/-	granted
2.	Loss of estate	-	2,500/-	granted
3.	Funeral expenses	-	2,000/-	granted
	Total	-	Rs.4,57,834/-	granted Rs.4,57,834/-

12.In the result, the award of the Tribunal dismissing the claim petition is set aside and this Civil Miscellaneous Appeal is allowed. The compensation awarded by this Court comes to Rs.4,57,834/- 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 the Court fee, if any on the compensation granted by this Court. The second respondent-Insurance Company is directed to deposit the award amount now determined by this Court, along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, appellants are permitted to withdraw equal share of the award amount among themselves now determined by this Court, along with interest and costs. No costs.

-s/d-
Assistant Registrar(CS-IV)

True Copy

Sub-Assistant Registrar

To
1.The I Additional District Judge,
Motor Accident Claims Tribunal,
Erode.

2.The Section Officer,
VR Section,
High Court,
Madras.

+1 CC to Mr.C.Paranthaman, Advocate sr 38057.
+2 Ccs to Mr.C.Paraneedharan, advocate sr 39854.

C.M.A.No.234 of 2018

PP(CO)
SP(30/08/2019)