BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 17.06.2019

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

CMA(MD)No.393 of 2019
and
CMP(MD)No.4764 of 2019

M/s.United India Insurance Company Limited,
Through its Divisional Manager,
D.No.7A, West Veli Street,
Madurai District. ... Appellant/2nd Respondent

vs.

1)Tmt.Pandiyammal
2)Minor Alagumuthu
3)Minor Vairamuthu
4)Minor Santhanapandi :1 to 4th Respondent/Petitioners
(Minor respondents 2 to 4 are represented through their mother/ guardian, the 1st respondent Pandiammal herein)

5)M.Muthumani
: 5th Respondent/1st Respondent

Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree in MCOP.No.843 of 2015 dated 31.10.2017 on the file of the Motor Accidents Claims Tribunal, 6th Additional District Court, Madurai.

For Appellant : Mr.J.S.Murali
For R1 to R4 : Mr.A.Theethar

JUDGMENT

This appeal has been filed against the judgment and decree in MCOP.No.843 of 2015 dated 31.10.2017 on the file of the Motor Accidents Claims Tribunal, 6th Additional District Court, Madurai.

2.In an accident which occurred 19.12.2014, the husband of the 1st respondent/claimant and father of the respondents 2 to 4/minor claimants died. The legal representatives filed claim petition under Section 163-A of the Motor Vehicles Act and the Tribunal considering the oral and documentary evidence on either side, directed the appellant who is the insurer of the 5th respondent's vehicle, to pay compensation of Rs.7,03,000/- with 7.5% interest per annum from the date of petition till the date of deposit. However, since the driver of the 5th respondent's vehicle involved in the accident, did not possess valid driving licence at the time of accident, the Tribunal directed the appellant to pay the compensation at the first instance and thereafter recover the same from the 5th respondent/owner of the vehicle. Aggrieved by the said award, the appellant has filed this appeal challenging negligence and quantum.

3.Learned counsel for the appellant would contend that the deceased was a tort-feasor and therefore, his heirs cannot claim compensation for his own wrong. In support of the said submission, he relied on the Supreme Court judgment in National Insurance Company Ltd., vs. Ashalata Bhowmil and others reported in 2018 SAR (Civil) 1119. On the quantum of compensation, learned counsel contended that the award of Rs.1,00,000/- towards loss of consortium is on the higher side and as per the judgment of the Apex Court in **National Insurance Company Limited vs. Pranay Sethi and others (Special Leave Petition(Civil)No.25590 of 2014 dated 31.10.2017),** under conventional heads, the claimants are entitled to Rs.70,000/- only, but the Tribunal has awarded Rs.1,20,000/-. Thus, he prayed for reduction under the above heads.

4.Learned counsel for the respondents 1 to 4/claimants would contend that the appellant cannot raise the defence of negligence in a claim petition filed under Section 163-A of the Motor Vehicles Act and in support of the same, he relied on a Full Bench judgment of the Hon'ble Supreme Court in Shivaji and another vs. Divisional Manager, United India Insurance Co.Ltd., and others reported in 2018 (2) TN MAC 149 (SC) and also a decision of this Court reported in 2019 (1) TN MAC 589, United India Insurance Co. Ltd., vs. M.Vanitha. On the quantum of compensation, he would contend that the Tribunal appreciating the evidence in proper perspective, has awarded compensation which does not require interference by this Court.

5.Heard both sides and perused the records.

6.Though the learned counsel for the appellant made submissions on the aspect of negligence, as rightly contended by the learned counsel for the claimants, the appellant cannot question the negligence in a claim petition filed under Section 163-A of the Motor Vehicles Act and the said issue is no longer *res integra* in view of the Full Bench judgment of the Hon'ble Supreme Court in **Shivaji and another vs. Divisional Manager, United India Insurance Co.Ltd., and others** reported in **2018 (2) TN MAC 149 (SC),** wherein the Apex Court has held that permitting insurer to raise defence of negligence would bring proceeding under Section 163-A at par with proceeding under Section 166 would defeat the very legislative intent and therefore, the insurer cannot raise defence of negligence on the part of the victim to counter claim under Section 163-A. It is relevant to extract below paragraph 5 of the said judgment:-

> ''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 and Anr., MANU/SC/1562/2017 : 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 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.''

Therefore, this Court is not inclined to interfere with the finding of the Tribunal regarding negligence.

7.On the quantum of compensation, as rightly contended by the learned counsel for the appellant, the claimants are entitled to Rs.70,000/- only under conventional heads instead of Rs.1,20,000/- awarded by the Tribunal. Accordingly, the award of Rs.1,00,000/- towards loss of consortium is reduced to Rs.40,000/- and the award of Rs.10,000/- towards funeral expenses is enhanced to Rs.15,000/- and the award of Rs.10,000/- towards transportation is set aside and a sum of Rs.15,000/- is hereby awarded for loss of estate as per Pranay Sethi's case. Accordingly, the total compensation is calculated as follows:-

Loss of income	=	Rs.4,32,000/-
Loss of consortium	=	Rs. 40,000/-
Loss of love and affection	=	Rs.1,50,000/-
Funeral expenses	=	Rs. 15,000/-
Loss of estate	=	Rs. 15,000/-
Total	=	Rs.6,52,000/-
(Less) The amount awarded by the Tribunal	=	Rs.7,03,000/-
Modified compensation	=	Rs. 51,000/-

8.In the result, there shall be reduction of Rs.51,000/- on the quantum. The respondents 1 to 4/claimants are entitled to compensation of Rs.6,52,000/-. The appellant is directed to deposit the compensation of Rs.6,52,000/- with 7.5% interest per annum from the date of claim petition till the date of deposit, less the amount already deposited, if any, to the credit of the claim petition within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit of the award amount at the first instance, the appellant is permitted to recover the same from the 5th respondent/owner of the vehicle as per the mode of recovery incorporated in the judgment of the Hon'ble Supreme Court in Oriental Insurance Co.Ltd., Vs. Shri Nanjappan and others, reported in I (2004) ACC 524 (SC):-

> ''(7) ....For the purpose of recovering the compensation amount from the insured, the insurer shall not be required to file a suit. It may initiate a proceeding before the concerned Executing Court as if the dispute between the insurer and the insured was the subject matter of determination before the Tribunal and the issue is decided against the owner and in favour of the insurer. A notice shall be issued to the insured to furnish security for the entire amount. The offending vehicle shall be attached as a part of the security. If necessity arises, the Executing Court shall take assistance of the concerned Regional Transport Authority. The Executing Court shall pass appropriate orders in accordance with law as to the manner in which the insured, owner of the vehicle shall make payment to the insurer. In case there is any default it shall be open to the Executing Court to direct realisation by disposal of the securities to be furnished or from any other property of the insured. ....''

9.On such deposit of the award amount, the 1st respondent/claimant is permitted to withdraw her share in the ratio apportioned by the Tribunal without filing formal permission petition before the Tribunal. The balance amount being the shares of the respondents 2 to 4/minor claimants shall be deposited in a Nationalised Bank till they attain majority. The interest accruing on such deposit is permitted to be withdrawn by the 1st respondent/mother of minors once in three months directly from the bank.

With the above direction, this Civil Miscellaneous Appeal is partly allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (A.E)

// True Copy //

Sub Assistant Registrar(CS)

To

The 6th Additional District Judge,
Motor Accidents Claims Tribunal,
Madurai.

Copy to: The Section Officer,
V.R. Section
Madurai Bench of Madras High Court,
Madurai.

+1 CC to Mr.A.THEETHAR, Advocate SR-69091.
+1 CC to Mr.J.S.MURALI, Advocate SR-69347.

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