

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	03.08.2020
Pronounced On	31 .08.2020

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

C.M.A.No.2585 of 2011
(Through Video Conferencing)

1.Mallika

2.Minor. Ranjith kumar

3.Minor. Vidhyabathi

(Minor 2 & 3 appellants are rep. by their
next friend guardian Mother Mallika) ... Appellants

Vs.

1.D.Jaganathan

2.National Insurance Co. Ltd.,
Regional Office,
Coimbatore.

3.Abdul Rahman

4.National Insurance Co. Ltd.,
Regional Office, Coimbatore. Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, to set aside the Judgment and Decree dated 30.01.2010 made in M.C.O.P.No.585 of 2007 on the file of Motor Accident Claims Tribunal (Fast Track Court), Namakkal and to enhance the award amount with interest and cost.

For Appellants : Mr.M.Lokesh for
Mr.Ma.P.Thangavel
For R1 and R3 : No appearance
For R2 & R4 : M/s.R.Sree vidhya

J U D G M E N T

The claimants are the appellants in this Civil Miscellaneous Appeal. They are aggrieved by the impugned Judgment and Decree dated 30.01.2010 passed by the Motor Accident Claims Tribunal (Fast Track Court), Namakkal in M.C.O.P.No.585 of 2007.

2. By the impugned Judgment and Decree, the Tribunal has awarded a sum of Rs.4,43,700/- as compensation together with interest at 7.5% p.a. from the date of filing of the claim

petition till the date of deposit, to the appellants/claimants. The appellants/claimants have filed this Civil Miscellaneous Appeal for enhancement of compensation by another sum of Rs.1,00,000/-. Accordingly, they have paid the court fee of Rs.372.50/-.

3. Though the claim was originally filed under Section 166 of the Motor Vehicles Act, 1988 by the appellants/claimants, they subsequently filed I.A.No.208 of 2009 for converting the claim under Section 163(A) of the Act. The said amendment was also allowed by the Tribunal on 08.07.2009.

4. The brief facts of the case are that the deceased Chandrasekar the husband of the 1st appellant and the father of the minor 2nd and 3rd appellants, met with a motor accident on 12.04.2006 at about 03.15 p.m, near Indigo Factory while proceeding from Kothagiri to Kunnoor. It is stated that he was sitting as a pillion on a motorcycle bearing registration No. TN-38-S-1247 belonging to the 1st respondent insured with the 2nd respondent Insurance Company, when a Maruthi Van bearing registration No.TN-37-AM-9966 of the 3rd respondent insured with the 4th respondent Insurance Company was driven in a rash and negligent and collided by each other, resulting in grievous injuries of the deceased who eventually succumbed by the injuries.

5. In the claim petition, it was alleged that both the drivers, i.e. the rider of the motorcycle on which the deceased was sitting as a pillion and the driver of the maruthi van were negligent, as a result of which, the accident took place resulting in the death of the deceased. The Tribunal after considering the evidence on record concluded that since the claim was under Section 163(A) of the Motor Vehicles Act, 1988, the appellants/claimants were entitled for a structured compensation. Accordingly, the Tribunal has awarded the aforesaid compensation.

6. I have considered the arguments advanced by the learned counsel for the appellants and the learned counsels for the respective Insurance Companies.

7. In my view, the Tribunal has correctly determined the compensation under Section 163(A) of the Act. It is not open for the appellants to approbate and reprobate the claim having opted to receive the compensation under Section 163(A) of the Act. Therefore, the appellants cannot claim for enhancement of compensation under Section 166 of the Act in the light of the decision of the Hon'ble Supreme Court in United India Insurance Company Ltd. Vs. Sunil Kumar, 2017 (2) TN MAC 753: (2019) 12 SCC 398.

8. Therefore, the 1st respondent owner of the motorcycle and the 4th respondent Insurance Company are directed to deposit the entire amount of compensation as awarded by the Tribunal together with interest at 7.5% per annum from the date of filing of the claim petition till the date of deposit, less the amount already deposited if any, within a period of six weeks from the date of receipt of a copy of this Judgment.

9. On such deposit, the 1st appellant is permitted to withdraw her share together with interest thereon, less any amount already withdrawn, less the amount withdrawn if any, by filing suitable applications before the Tribunal.

10. Since the 2nd and 3rd appellants are minor, their share shall be deposited by the Tribunal in any one of the Nationalised Bank under reinvestment scheme till they attain the age of majority. The 1st appellant/1st claimant, who is the guardian of the minor, is permitted to withdraw the accrued interest from the deposit of minors once in three months directly from the said Bank. On attaining majority, the 2nd and 3rd appellants may be permitted to withdraw their share together with interest thereon, by filing suitable application before the Tribunal.

11. Accordingly, this Civil Miscellaneous Appeal is dismissed. No cost.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

jen

To:

Motor Accident Claims Tribunal
(Fast Track Court), Namakkal.

Copy To

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

+1cc to Mr.Ma.P.Thangavel, Advocate, S.R.No. 28621

C.M.A.No.2585 of 2011

BP(CO)
GN(22/04/2021)