IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.07.2020

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THE HON'BLE MR.JUSTICE C.SARAVANAN

C.M.A.No.2326 of 2012
and
M.P.No.1 of 2012

(Through Video Conferencing)

The New India Assurance Co. Ltd.,
No.45, 2nd Line Bench, Moore Street,
Chennai 600 001. ... Appellant

Vs.

1.S.Saroja

2.S.Aarya (minor)
rep. by his mother & NG S.Saroja

3.R.Powanammal

4.N.Lakshmi Sesha Kumari ... Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the decree and judgment dated 23.11.2011 made in M.C.O.P.No.3816 of 2010, on the file of Motor Accident Claims Tribunal (V Court of Small Causes), Chennai.

For Appellant : Mr.K.Vinod for Mr.Elveera Ravindran

For R1 to R3 : M/s.Ramya V Rao

For R4 : No appearance

J U D G M E N T

The appellant Insurance is aggrieved by the impugned Judgment and Decree 23.11.2011, passed by the Motor Accidents Claims Tribunal, Chennai, (In the V Court of Small Causes, Chennai), in M.C.O.P.No.3816 of 2010.

2. By the impugned Judgment and Decree, the Tribunal has awarded a sum of Rs.3,69,500/- as compensation payable by the

appellant Insurance Company to the 1st to 3rd respondents/claimants who are the wife, the child and the mother of the deceased R.Settu.

3. The brief facts of the case are that the deceased aged about 40 years was working as a load man and was earning a sum of Rs.3,300/- per month. He met with an accident while riding motorcycle bearing registration No.TN-04-T-5044 from MRH Salai, Vadaperumbakkam, near SRMT Office. It is stated that a lorry bearing registration No.AP-16-TV-3465 insured with the appellant Insurance Company belonging 4th respondent which was standing in the left side of the road, suddenly came to right side of the road and hit the motorcycle which was being ridden by the deceased, as a result of which, he suffered grievous injuries and died on the spot.

4. Under these circumstances, the dependents of the deceased R.Settu filed a claim petition for a compensation of Rs.7,00,000/- under Section 163-A of the Motor Vehicles Act. The Tribunal after considering the evidence on record, awarded the aforesaid compensation to the 1st to 3rd respondents/claimants and fixed the liability on the appellant Insurance Company to pay the compensation. Aggrieved by the same, the present Civil Miscellaneous Appeal has been filed.

5. In this appeal, the appellant Insurance Company has mainly tried to distance with liability on the ground that deceased was driving the aforesaid motorcyle in a rash and negligent manner. There were conflicting decisions when the Tribunal passed the impugned Judgment and Decree. The recent decision of the Hon'ble Supreme Court in United India Insurance Company Limited Vs. Sunil Kumar and Another, (2019) 12 SCC 398, however clarified the position and held that "compensation under Section 140of the Act was thus understood to be in the nature of an interim payment pending the final award under Section 166 of the Act. 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".

6. The Hon'ble Supreme Court further held as follows:-

> 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 163A (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 163A of the Act to be contemplating any such situation would go contrary to the very legislative object behind introduction of Section 163A 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 163A of the Act to permit the Insurer to raise the defence of negligence would be to 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.

9. For the aforesaid reasons, we answer the question arising by holding that in a proceeding under Section 163A of the Act it is not open for the Insurer to raise any defence of negligence on the part of the victim.

10. The appeal will now be listed before regular Bench for disposal on merits, after the opinion of the larger Bench on the true scope and meaning of the provisions contained in Section 170 of the Motor Vehicles Act, 1939 is rendered.

7. In view of the same, I find no merits in this Civil Miscellaneous Appeal. It is therefore liable to be dismissed. Therefore, if the appellant Insurance Company has not deposited the amount of compensation awarded by Tribunal, it is directed to deposit the same together with interest as directed by the Tribunal, less the amount already deposited if any, within a period of six weeks from the date of receipt of a copy of this Judgment.

8. On such deposit, the 1st and 3rd respondents/1st and 3rd claimants are permitted to withdraw the same together with interest accrued thereon, less the amount already withdrawn if

any, by filing suitable application before the Tribunal.

9. Since the 2nd respondent/2nd claimant is minor, her share shall be deposited in any one of the Nationalised Bank under reinvestment scheme till she attains the age of majority. The 1st respondent/1st claimant, who is the guardian of the minor, is permitted to withdraw the accrued interest from the minor's deposit once in three months directly from the said Bank. On attaining majority, the 2nd respondent/2nd claimant is to be permitted to withdraw her share, by filing suitable application before the Tribunal.

10. Accordingly, this Civil Miscellaneous Appeal is dismissed. No cost. Consequently, connected Miscellaneous Petition is closed.

-s/d-
Assistant Registrar

True Copy
Sub-Assistant Registrar

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To:-
1.The Motor Accident Claims Tribunal,
(V Court of Small Causes), Chennai.

Copy to:
The Section Officer
VR Section
High Court,
Madras-104

vsnII(co)
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