

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	21.07.2020
Pronounced On	07.08.2020

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THE HON'BLE MR.JUSTICE C.SARAVANAN

C.M.A.No.694 of 2011

and

M.P.No.1 of 2011

(Through Video Conferencing)

National Insurance Company Ltd.,
Third Floor, No.751,
Anna Salai, Chennai – 600 002.

... Appellant

Vs.

1.Vijaya

2.Rose

3.Latha Annadarajan

... Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and Decree in M.C.O.P.No.265 of 2007 dated 22.07.2010 on the file of the Motor Accidents Claims Tribunal, (Chief Court of Small Causes), Chennai.

For Appellant : M/s.R.Rathana Thara

For R1 & R2 : Mr.Varadhakamaraj

J U D G M E N T

Heard the learned counsel for the appellant and the 1st and 2nd respondents.

2. The appellant Insurance Company is aggrieved by the impugned Judgment and Decree dated 22.07.2010 passed by the Motor Accidents Claims Tribunal, Chennai, Court of Small Causes, Chennai in M.C.O.P.No.265 of 2011.

3. By the impugned Judgment and Decree, the Tribunal has awarded a sum of Rs.4,16,000/- together with interest at 7.5% per annum, from the date of the claim petition till the date of deposit, to the 1st and 2nd respondents/claimants.

4. The 1st and 2nd respondents are the legal heirs and dependents of the deceased R.Ramesh @ Vijayarangan, who died in a motor vehicle accident on 19.11.2006. On the fateful day, he was proceeding in a motor

cycle bearing registration No. TN-20-W-9415 as a pillion rider, on Redhill-Tiruvallur High Road, when another motor cycle bearing registration No. TN-05-F-2937 driven by the husband of the 3rd respondent, allegedly driven in a rash and negligent manner, hit the motor cycle on which the deceased was travelling as a pillion rider, as a result of which, the deceased suffered grievous injuries and died later. Therefore, the claim petition came to be filed by the 1st and 2nd respondents.

5. After considering the evidence on record, the Tribunal has awarded the aforesaid compensation to the 1st and 2nd respondents/claimants. Aggrieved by the same, the present Civil Miscellaneous Petition was filed by the Insurance Company.

6. In this appeal, the main ground to assail the impugned Judgment and Decree passed by the Tribunal is that the deceased was travelling as a second pillion rider in the motor cycle which hit the motor cycle driven by the husband of the 3rd respondent insured with the appellant Insurance Company and both of them died. It is therefore submitted that the

accident was also due to the contributory negligence of the rider of the motorcycle, in which the deceased was riding as a second pillion rider.

7. In this connection, an attention was drawn to Exhibit P1 FIR, which clearly states that it is the rider of the motorcycle, in which the son of the 1st and 2nd respondents was riding as the second pillion rider who was negligent. It is further submitted that the deposition of PW 2 was nothing but a falsehood and it was introduced to contradict the content of the Exhibit P1 FIR. It is submitted that no documents were produced to corroborate the oral evidence of PW2.

8. It is further submitted that even though the claim petition was filed under Section 163-A which does not warrant pleading of wrongful act of negligence or default of the owner of the vehicle, yet claimants are required to prove that the rider/driver of the insured vehicle was negligent to fasten liability on the insurer. It is therefore submitted that at best the appellant can be exposed to a maximum liability of Rs.50,000/- in terms of Section 140 of the Motor Vehicles Act, 1988.

9. It is further submitted that 1st and 2nd respondents also ought to have proceeded against the owner of the motorcycle, in which the deceased travelled as a second pillion as it was the owner who was at fault and irresponsible for having allowed the deceased to travel as a second pillion rider.

10. Alternatively, it was contended that the appellant insurer can be exposed to a maximum of 50% liability as there was contributory negligence on the part of the rider/owner of the motorcycle on which the deceased travelled as a second pillion rider.

11. The learned counsel for the appellant relies on the decision of the Hon'ble Supreme Court in **Oriental Insurance Company Vs. Premalatha Shukla**, 2020 (1) TNMAC 1, wherein the Hon'ble Supreme Court held that the proof of negligence of driver of the vehicle sought to indicate is a must. The learned counsel for the appellant relied on the following decisions:-

- i. **National Insurance Co. Ltd., Vs. S.Chitra and others**, reported in 2010 ACJ 1316.

- ii. **Managing Director, Tamil Nadu State Transport Corporation Limited Vs. Abdul Salam and Others**, reported in 2004(2) TN MAC 59 (DB).
- iii. **Oriental Insurance Co. Ltd., Gobichettipalayam Vs. Sivagami & Others**, reported in 2012 (1) TN MAC 713.

12. Defending the impugned order, the learned counsel for the 1st and 2nd respondents submits that the claim was filed under Section 163-A of the Motor Vehicles Act, 1988 and therefore, the 1st and 2nd respondents were neither required to plead default or negligence to get compensation. It is further submitted that the Tribunal, after considering the evidence on record, found that the rider of the insured motorcycle insured with the appellant Insurance Company was at fault and therefore no interference were required in this appeal and prayed for its dismissal.

13. Learned counsel for the respondent relied on the decision of the Hon'ble Supreme Court in the following cases:-

- i. **United India Insurance Company Ltd. Vs. Sunil Kumar**, reported in 2017 (2) TN MAC 753: (2019) 12 SCC 398.
- ii. **Shivaji and Another Vs. The Divisional Manager, United India Insurance Company Ltd. and Others**, reported in 2018 (2) T.N. MAC 149.

14. We have considered the arguments advanced by the learned counsel for the appellant Insurance Company and the 1st and 2nd respondents. The issue is now squarely covered against the appellant Insurance Company in the decision of the Supreme Court in **United India insurance Company Ltd Vs. Sunil Kumar and Another**, reported in (2019) 12 SCC 398.

15. The court there observed that compensation under Section 140 of the Act was understood to be in the nature of an interim payment pending final award under Section 166 of the Act. On the other hand, Section 163-A was introduced in the 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 were to provide for payment of final compensation to class of claimants (whose income was below Rs.40,000 p.a) on the basis of a structured formula without reference to fault liability.

16. Ultimately, in paragraph No.8, the Hon'ble Supreme Court held that **“the compensation under Section 163-A of the Act on the basis of 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 involved in the accident.** This was made explicit by Section 163-A(2)”. The Court also observed that **“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 the introduction of Section 163-A of the Act namely, final compensation within a limited timeframe on the basis of a structured formula to overcome the situations where the claims of compensation on the basis of the fault liability were taking an unduly long time.** The court further held that to understand Section 163-A of the Act to permit an insurer to raise the defence of negligence

would be to bring a proceeding under Section 163-A of the Act on par with the proceedings under Section 166 of the Act which would not only be self-contradictory but also defeat the very purpose of the legislative intention. Thus the court held that in a proceeding under Section 163-A it is not open for the insurer to raise any defence of negligence on the part of the victim.

17. As the Hon'ble Supreme Court has answered the issue in no uncertain term against the appellant in the above extracted passages in its decision in **Sunil Kumar's** case referred to *Supra*, the present Civil Miscellaneous Appeal filed by the appellant Insurance Company is liable to be dismissed.

18. Therefore, if the amount of compensation awarded by the Tribunal has not deposited by the appellant Insurance Company, 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.

C.SARAVANAN, J.

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19. On such deposit, the 1st and 2nd respondents/claimants are permitted to withdraw their respective shares together with interest as directed by the Tribunal, less the amount already withdrawn if any, by filing suitable application before the Tribunal.

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

07.08.2020

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Internet : Yes / No

Notes:-In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To: The Motor Accidents Claims Tribunal,
(Chief Court of Small Causes), Chennai.

Pre-delivery Judgment made
in C.M.A.No.694 of 2011
and M.P.No.1 of 2011