IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.01.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.564 of 2015
and
M.P.No.1 of 2015

M/s.National Insurance Co. Ltd.,
Office No.19, Officers Line, Vellore.
... Appellant /2nd Respondent

Vs.

1.Kamala Ammal

2.Vijaya

3.Minor Ajith

4.Minor Deepika

5.Minor Arun ...Respondents1 to 5/ Petitioners

(minors represented by their mother & next friend Vijaya)

6.D.Kumar ...6th Respondent/1st respondent
(6^{th} respondent remained exparte)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 30.10.2014 made in M.C.O.P.No.171 of 2007 on the file of Motor Accident Claims Tribunal, Sub Court, Arni.

For Appellant	:	Mr.M.Krishnamoorthy
For R1 to R5	:	No appearance
R6	:	Exparte before Tribunal

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant/Insurance Company challenging the award dated 30.10.2014 made in M.C.O.P.No.171 of 2007 on the file of Motor Accident Claims Tribunal, Sub Court, Arni.

2.The appellant/Insurance Company is the 2nd respondent in M.C.O.P.No.171 of 2007 on the file of Motor Accident Claims Tribunal, Sub Court, Arni. The respondents 1 to 5 filed the said claim petition claiming a sum of Rs.7,00,000/- as compensation for the death of one Kumar, who died in the road accident that took place on 12.09.2007.

3.According to the respondents 1 to 5, on the date of the accident i.e. on 12.09.2007, at about 09.30 pm, the deceased was riding his motorcycle on Arcot - Arni road. At that time, one bullock cart coming in the opposite direction turned suddenly. Due to sudden turn, the deceased dashed against the bullock cart, as a result of which, he sustained injuries all over his body and died in the hospital. Therefore, the respondents 1 to 5 have filed the above claim petition claiming compensation against the 6th respondent as well as the appellant.

4.The appellant/Insurance Company filed counter statement denying the averments made by the respondents 1 to 5 and contended that at the time of accident, the deceased was riding his motorcycle and dashed against the bullock cart coming in the opposite direction. The deceased Kumar is solely responsible for the accident. Further, police case was closed as charge abates vide R.C.S.No.14/2007 as the rider of the motorcycle died in the accident. The Judicial Magistrate Court has also accepted and closed the case as charge abates. Therefore, the Insurance Company is not liable to pay any compensation to the respondents 1 to 5.

5.Before the Tribunal, the 2nd respondent, examined herself as P.W.1 and one Ramesh an eyewitness was examined as P.W.2 and marked three documents as Exs.P1 to P3. On the side of the appellant, one Paramasivam was examined as R.W.1 and marked four documents as Exs.R.W.1 to R.W.4.

6.The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent riding by the rider of the motorcycle belonging to the 6th respondent and directed the appellant/Insurance Company being insurer of the said motorcycle to pay a sum of Rs.7,57,400/- as compensation to the respondents 1 to 5.

7.Against the said award dated 30.10.2014 made in M.C.O.P.No.171 of 2007, granting compensation to the respondents 1 to 5, the appellant/Insurance Company has come out with the present appeal.

8.The learned counsel appearing for the appellant/Insurance Company contended that the Tribunal ought to have dismissed the claim petition as against the respondents 1 to 5 who have mischievously arrayed as legal heirs of the deceased, for whose death, the claim was made in the claim petition. The claim petition against the insurer alone is not maintainable. The appellant is liable only to indemnify the insured. The deceased rode the motorcycle in a rash and negligent manner and dashed against the bullock cart and he is the tortfeasor. The respondents 1 to 5 who are the legal heirs of the tortfeasor are not entitled to claim compensation. The learned counsel for the appellant, without prejudice to the above contentions, submitted that the claim petition was filed under Section 163-A of the Motor Vehicles Act, the Tribunal has to follow the Second Schedule of the Motor Vehicles Act in awarding compensation. The Tribunal erred in fixing monthly income of the deceased at Rs.4,000/- and the amounts awarded by the Tribunal under conventional heads are excessive and contrary to the Second Schedule and prayed for setting aside the award of the Tribunal.

9.Though the respondents 3 to 5 are minors represented by the 2nd respondent and also despite notice served on the respondents 1 & 2 and their names are printed in the cause list, there is no representation on behalf of them either in person or through counsel. The 6th respondent remained ex parte before the Tribunal. Hence, notice to the 6th respondent was dispensed with.

10.Heard, the learned counsel appearing for the appellant/Insurance Company and perused all the materials available on record.

11.From the materials available on record, it is seen that the claim petition is filed under Section 163-A of the Motor Vehicles Act. As far as Section 163-A of the Motor Vehicles Act is concerned, negligence need not be proved by the claimants. Earlier while incorporating the Section, the Hon'ble Apex Court has held that tortfeasor or legal heirs are not entitled to compensation from the Insurance Company. Subsequently, the issues whether tortfeasor or legal heirs of the tortfeasor are entitled to claim compensation from the Insurance Company and that whether the Insurance Company can plead that Insurance Company is not liable to pay compensation to the tortfeasor or legal heirs of the tortfeasor, came up for consideration before the Three-Judges Bench of the Hon'ble Apex Court reported in 2017 (2) TN MAC 753 (SC) [United India Insurance Co. Ltd., Vs. Sunil Kumar and another], wherein it was held that even a tort-feasor or legal representatives of the tort-feasor can claim compensation against the Insurance Company in the claim petition filed under Section 163-A of the Motor Vehicles Act. The relevant paragraphs are extracted hereunder:

> "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:
>
> > "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 negligence on the part of the victim."

The above said judgment was considered by the subsequent Three-Judges Bench in the judgment of the Hon'ble Apex Court reported in 2018 (2) TN MAC 149 (SC) [Shivaji and another Vs. Divisional Manager, United India Insurance Co. Ltd., and others]. The relevant paragraphs are extracted hereunder:

"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., Vs. Sunil Kumar and another, 2017 92) TN MAC 753 (SC): 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 163-A 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 163-A of the Act, it would "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". Consequently, it was held that in a proceeding under Section 163-A of the Act, the Insurer cannot raise any defence of negligence on the part of the victim to counter a claim for Compensation."

The Hon'ble Apex Court has held that when the claim petition is filed under Section 163-A of the Motor Vehicles Act, the Insurance Company is not entitled to set up a plea of negligence on the part of the victim or legal heirs of the deceased. In view of the ratio of the above two judgments, the contention of the learned counsel for the appellant that the legal heirs are not entitled to claim compensation and the deceased was tortfeasor is devoid of merits.

12.As far as quantum of compensation is concerned, the respondents 1 to 5 contended that the deceased was working as a Mason and was earning a sum of Rs.6,000/- per month. They have not produced any materials to substantiate their claim. In the absence of any material evidence, the Tribunal fixed notional income of the deceased at Rs.4,000/- per month. If the notional income of the deceased as fixed by the Tribunal is taken up as Rs.4,000/- per month, the annual income of the deceased would be Rs.48,000/-. As per Section 163-A of the Motor Vehicles Act, the compensation payable under Section 163-A of the Motor Vehicles Act is by structural formula mentioned in the Second Schedule. As per Second Schedule, the person can maintain the claim petition under Section 163-A of the Motor Vehicles Act, if annual income is Rs.40,000/- or less. In the present case, the respondents 1 to 5 have claimed that the deceased was earning a sum of Rs.6,000/- per month and the Tribunal fixed a sum of Rs.4,500/- per month which exceeds the annual income fixed in the Second Schedule. The Tribunal failed to consider that if the annual income is more than Rs.40,000/-, the claim petition under Section 163-A of the Motor Vehicles Act is not maintainable and is liable to be dismissed.

13.In the result, this Civil Miscellaneous Appeal is allowed and the award of the Tribunal is set aside. It is made clear that if the appellant/Insurance Company has deposited the award amount, the appellant is entitled to withdraw the same. However, if the respondents 1 to 5 had already withdrawn the award amount, the appellant is not entitled to recover the same from the respondents 1 to 5. No costs. Consequently, connected Miscellaneous Petition is closed.

-s/d-
Assistant Registrar

True Copy
Sub-Assistant Registrar

mtl
To
1.The Subordinate Judge,
Motor Accident Claims Tribunal
Arni.

2.The Section Officer
VR Section
High Court
Madras.

+1 cc to M/s.M.Krishnamoorthy Advocate sr4875

C.M.A.No.564 of 2015
and
M.P.No.1 of 2015

vsnII(co)
aa01/09/2020