IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :07.10.2020

Pronounced on :13.10.2020

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

C.M.A.No.228 of 2016
and
C.M.P.No.1903 of 2016

New India Assurance Co.Ltdd.,
Tiruvannamalai. ... Appellant /2nd Respondent

/versus/

1.Vignam
2.Kamala ...Respondents 1 & 2/Claimants
3.Venkatesan ...3rd Respondent/1st Respondent

Prayer: Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree in M.C.O.P.No.1771 of 2013, dated 04.04.2014 on the file of the Motor Accidents Claims Tribunal, Special Subordinate Judge, Tirupattur.

For Appellant :Ms.Harini for
Mr.N.Vijayaraghavan

For Respondent :Mr.Pa.Sudesh Kumar for R1and R2
No appearance for R3

J U D G M E N T

(The case has been heard through video conference)

The appeal against the award passed by the Motor Accident Claims Tribunal, Vellore in M.C.O.P.No.1771/2013, is filed by the Insurance Company, on being aggrieved by the award fixing responsibility to pay the award amount of Rs.6,88,000/- to the claimants and to recover from the vehicle owner.

2.The brief facts of the case is that, on 29/06/2010 at about 4.30 am, the lorry bearing registration No. TN 28 R 7286 on the Chennai to Bangalore High ways at Sathuvacharri opposite to GS Mahal hit the rear of the lorry going ahead. The driver and the cleaner of the lorry died due to the impact. The parents of the driver filed claim petition under Section 163 A of the Motor Vehicles Act against the owner and the insurer of the lorry. The Tribunal awarded Rs.6,88,000/- as compensation with 7.5% interest and permitted the insurer the liberty to recover the same from the owner of the vehicle since, the deceased driver had no valid driving license.

3.The said award is challenged in this appeal by the insurer on the ground that, the Tribunal erred in entertaining the claim petition under Section 163 A of the Act, despite the claimants have mentioned the income of the deceased as Rs.10,000/- per month. When the upper cap for a claim under Section 163 A is only Rs.40,000/- per annum, the Tribunal ought not have entertained the claim petition. Further, the accident occurred due to the negligence of the lorry driver who rash and negligently dashed the rear side of the forgoing vehicle. The Tribunal failed to consider the decision of the Hon'ble Supreme Court rendered in National Insurance Company –vs- Sinitha and others reported in [2011 (8) SCC 301], which states that it is always open to the owner or insurance company to defeat a claim under Section 163 A of the Act by pleading and establishing fault ground. Further, the violation of policy condition namely, deceased lorry driver had no valid license to drive a heavy vehicle ought to have taken into consideration by the tribunal to totally exonerate the insurer.

4.Heard the learned counsels for the appellant and the respondents 1 and 2. Exhibits and depositions perused.

5.The First Information Report marked as Ex.P-1 shows the deceased Santhakumar as accused for the rash and negligent driving. Besides Santhakumar the cleaner Shamsudeen travelling in the lorry also died in the accident. The MVI report marked as Ex.P-5 indicates that due to the impact with the ongoing vehicle, the entire front portion of the lorry driven by the deceased crushed and damaged. The Tribunal while considering the claim had failed to consider the negligence of the deceased who is the cause for the accident. It has proceeded under the impression that in the claim petition under Section 163 A, it is not necessary to ascertain negligence. After holding so, the Tribunal has converted the petition under Section 163A into petition under Section 166 and has applied the multiplier and awarded compensation of Rs.6,88,000/-. misapplying the dictum laid in Ningamma and another v. United India Insurance Company Ltd. reported in (2009) 13 SCC 710.

6.Section 163A in the MV Act was introduced in the year 1994 to provide payment of compensation as per the Second Schedule of the Act, to the legal heir of the deceased accident victim or to the permanently disabled person on structured formula basis, by mandating the owner of the motor vehicle or the authorised insurer holding liable to pay compensation. In order to prove a claim under this Section, the claimant would not be required to plead or establish that the death or permanent disability in respect of which the claim has been made was due to any wrongful act or neglect or default of the owner of the vehicle concern. To avoid the long drawn trail, for claimants whose annual income is less than Rs.40,000/- this Section was introduced to avail compensation expeditiously under structured formula mentioned in Schedule II of the Act. The defences which are open to the insurance company under Section 149 is not available, when the claim petition is filed under Section 163 A of the Act. Whereas, when an application for compensation filed under Section 166 of the MV Act, the Tribunal is required to hold an enquiry into the claim and ascertain who was responsible for accident and whether the claimants are covered under the policy.

7.In the impugned award, the Tribunal has relied upon the provisions of Section 163 A for no fault clause but instant of applying the structured formula prescribed under Schedule II, had resorted to Section 166 and 168 to compute compensation. The Tribunal while exercising its discretion of converting the claim under Section 163 A(no fault liability) to claim under Section 166 (fault liability) had failed to take note of the contribution of the deceased lorry driver who was the tortfeasor and cause for the accident by hitting the forgoing vehicle from behind.

8.Therefore in order to arrive at a fair and equitable distribution of justice, this Court while upholding the Tribunal act of discretion converting the claim petition filed under Section 163 A into petition under Section 166 of the MV Act, 50% of the award is deducted for the deceased driver's contributory negligence, taking note of fact that the accident occurred due to the rash and negligence of the deceased who hit the rear of the vehicle going in front of him. Thus, the compensation of Rs.6,88,000/- awarded by the Tribunal is reduced to Rs.3,44,000/- with 7.5% interest from the date of filing (01.10.2010) till the date of deposit. The claimants shall apportion the award amount with proportionate interest equally.

9.From the records, this Court finds that, in C.M.P.No. 1903/2016 this Court has granted interim stay of the award subject to the condition that the appellant insurance company deposit the entire award amount with accrued interest in the M.C.O.P.No.1771/2013 account. The claimants were permitted to withdraw 50% of the award amount with proportionate interest. The balance amount directed to be deposited in any one of the Nationalised bank and the claimants were permitted to withdraw the interest once in three months pending further orders.

10.Since the claimants were already permitted to withdraw 50% with proportionate interest, they are not entitled for anything more as per the order passed in this appeal. If they have withdrawn the interest accrued from the balance 50%, the same shall not be recovered from the claimants. The Insurance company is permitted to get refund of the balance 50% and accrued interest, if any. The right of recovery from the vehicle owner as ordered by the Tribunal is confirmed. Accordingly, the appeal is partly allowed.

11.In the result, this Civil Miscellaneous Appeal is partly allowed. No order as to costs. Consequently, connected Miscellaneous Petition is closed.

SD/-
ASSISTANT REGISTRAR

// TRUE COPY //

SUB ASSISTANT REGISTRAR

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To

The Motor Accident Claims Tribunal,
Special Subordinate Judge, Tirupattur.

Copy to

The Section Officer,
Vernacular Records,
High Court,
Madras-104.

+1cc to Mr.P.A.Sudesh Kumar, Advocate Sr.34197

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