IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED.22.09.2020

CORAM

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A.No.706 of 2013 &
M.P.No.1 of 2013

National Insurance Company Ltd.,
D.O.- 2, 11, Ramakrishna Road,
Salem – 2 ... Appellant/Petitioner

vs.

1.Kavitha
2.Minor Soundarya
3.Minor Manikandan
4.Minor Deepa
5.Sakthivel
6.Chinnammal
7.Vaiyapuri ` ...Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award and decree dated 25.06.2012 made in O.P.No.459 of 2008 on the file of the Motor Accident Claims Tribunal (Ist Additional District Judge), Salem.

For Appellant : Mr.D.Bhaskaran

For Respondents : No appearance – R1
R2 to R4 – Minors
R5 – not known
Mr. M.Senthil Kumar for R6 & R7

JUDGMENT

[This Appeal has been taken up for hearing through Video Conferencing]

This Appeal has been filed by the Appellant Insurance Company challenging the Award dated 25.06.2012 passed by the Motor Accident Claims Tribunal (1st Additional District Judge, Salem) in MCOP.No.459 of 2008.

2. A person by name Murugesan died on 03.02.2008 as a result of an accident caused by a vehicle owned by the fifth respondent and insured with the Appellant. The respondents 1 to 4 as well as the respondents 6 & 7 are the legal heirs of the deceased Murugesan. However, the respondents 1 to 4 preferred a claim before the Motor Accident Claims Tribunal in MCOP.No.459

of 2008 seeking compensation under Section 163-A of the Motor Vehicles Act in which the respondents 6 & 7 were arrayed as respondents 3 & 4 who are also the legal heirs of the deceased.

3. The Motor Accident Claims Tribunal under the impugned award directed the Appellant as well as the fifth respondent jointly and severally to pay the claimants a compensation of Rs.3,57,000/- together with interest and costs as detailed hereunder:

Heads	Award Amount (Rs.)
Loss of dependency	2,70,000/- (15000 x 18)
Funeral expenses	2,000/-
Loss of consortium	5,000/-
Loss of estate	2,500/-
Ambulance charges	2,500/-
Loss of love and affection	75,000/-
Total	3,57,000/-

4. The Appellant/Insurance company has challenged the award on the following grounds namely (a) the deceased himself was a tort feasor and therefore, the Appellants who are his legal heirs cannot prefer a claim under Section 163-A of the Motor Vehicles Act and (b) the quantum of compensation awarded by the Tribunal under the impugned award is excessive.

5. Heard Mr.D.Bhaskaran, learned counsel for the Appellant and Mr.M.Senthil Kumar, learned counsel for the respondents 6 & 7. Despite service of notice on the first respondent, there is no representation on her side. Since this Court is going to confirm the Award, notice to the fifth respondent is dispensed with by this Court.

6. Insofar the first contention raised by the Appellant insurance company is concerned, the same is now well settled by the decision of the Hon'ble Supreme Court in the case of United India Insurance Company Limited vs. Sunil Kumar and another reported in (2019) 12 SCC 398. The relevant paragraphs in the said judgment is extracted hereunder:

> "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 were 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 on a 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."

7. In the case on hand, even though the deceased may have been at fault but he was riding the opposite vehicle and not the insured vehicle and hence, he is a third party. In the above referred Judgment, the Hon'ble Supreme Court has held that the insurer cannot take the defence of negligence on the part of the victim in case of a claim made under section 163-A of the Motor Vehicles Act. In view of the settled position of law, the first contention raised by the Appellant is rejected.

8. Insofar as the second contention raised by the Appellant is concerned, the same will have to be rejected by this Court for the following reasons:

(a) the Tribunal has erroneously fixed the annual income of the deceased at a meagre sum of Rs.15,000/-. The year of the accident is 2008. If the year of the accident was considered, the Tribunal would have fixed the annual income of the deceased at a much higher sum.

(b) the compensation awarded by the Tribunal under the heads namely loss of love and affection at Rs.75,000/-, Ambulance charge at Rs.2,500/- is not in accordance with

Schedule - II of the Motor Vehicles Act. However, if the notional annual income of the deceased was fixed by the Tribunal, after giving due consideration to the year of the accident it would have been a much higher sum. In the considered view of this Court, the overall compensation awarded by the Tribunal at Rs.3,57,000/- cannot be considered to be excessive as alleged by the Appellant.

Conclusion:

9. For the foregoing reasons, there is no merit in this appeal. Accordingly, this Appeal is dismissed. However, the rate of interest fixed by the Tribunal at 7.5% per annum is confirmed. The Appellant Insurance company as well as the fifth respondent are jointly and severally directed to deposit the compensation amount along with interest from the date of claim till the date of deposit and costs after deducting the amount already deposited if any to the credit of MCOP.No.459 of 2008 within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the Tribunal is directed to transfer the respective shares of the award amount along with accrued interest lying to the credit of MCOP.No.459 of 2008 to the bank account of the respondents 1, 6 & 7 respectively through RTGS as per the ratio of apportionment made by the Tribunal within a period of two weeks thereafter. Since the respondents 2 to 4 are minors, their respective shares of the award amount shall be deposited in any one of the nationalised banks till they attain majority and the first respondent/Guardian of the minors is permitted to withdraw the interest once in six months for the welfare of the minors. If the minors are attained the age of majority, it is open for them to file a formal petition before the Tribunal to declare them as major. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-I)

//True Copy//

Sub Assistant Registrar

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To

The Motor Accident Claims Tribunal,
1st Additional District Judge,
Chennai.

Copy To

The Section Officer,
VR Section, High Court,
Chennai.

C.M.A.No.706 of 2013

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