IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.12.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.Nos.896 & 897 of 2015

1.Roseli
2.Minor. Duena
3.Minor. Deena

(Minor appellants 2 & 3 are represented by their Guardian / Next Friend / Mother Roseli, 1st appellant herein)

4.Mary

5.Mathai ... Appellants/Petitioners [in C.M.A.No.896 of 2015]

M.Kangamuthu ... Appellant /Petitioner [in C.M.A.No.897 of 2015]

Vs.

1.Sharfudeen

2.The United India Insurance Company Limited,
No.11/392, Shop No.3 - Golden Complex,
Calicut road,
Gudalur,
The Nilgiris District. ... Respondents/Respondents [in both appeals]

Common Prayer: These Civil Miscellaneous Appeals are filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 16.04.2012 made in M.C.O.P.Nos.666 & 799 of 2010 on the file of the Motor Accident Claims Tribunal, Sub Court, Sathyamangalam.

For Appellant(s)	:	Mr.Ma.P.Thangavel
For R1	:	No appearance
For R2	:	Ms.I.Malar

C O M M O N   J U D G M E N T

(The matter is heard through "Video Conferencing/Hybrid mode".)

These Civil Miscellaneous Appeals are filed against the awards dated 16.04.2012 made in M.C.O.P.Nos.666 & 799 of 2010 on the file of the Motor Accident Claims Tribunal, Sub Court, Sathyamangalam.

2.Both the appeals are arising out of the same accident and hence, they are disposed of by this common judgment.

3.According to appellants in both the appeals, on 06.05.2010 at about 01.30 hours, while appellant in C.M.A.No.897 of 2015 was travelling in the Jeep bearing Registration No.TN 72 F 4545, which was driven by the deceased Wilson @ Thomas from Thiruppur to Gudalore on the Ooty – Gudalur Main Road at a moderate speed and at that time, an unknown vehicle came in the opposite direction with high speed in a rash and negligent manner without blowing horn and not observing the road rules. Therefore, to avoid the major accident, the deceased Wilson @ Thomas, who was driving the Jeep suddenly turned the Jeep on the left side of the road and due to the same, the Jeep lost its control and upset on the road side and thus, the accident occurred. In the accident, the said Wilson @ Thomas sustained fatal injuries and died on the spot and the appellant in C.M.A.No.897 of 2015 sustained multiple grievous injuries on the left knee, nose, head, right leg, abdomen and all over the body. Immediately after the accident, the appellant in C.M.A.No.897 of 2015 was taken to Government Hospital, Ooty and thereafter shifted to CMC Hospital, Coimbatore and at Private Hospital. Therefore, the appellants in C.M.A.No.896 of 2015 filed claim petition in M.C.O.P.No.666 of 2010 under Section 163(A) of the Motor Vehicles Act, claiming a sum of Rs.12,00,000/- as compensation for the death of the said Wilson @ Thomas and the appellant in C.M.A.No.897 of 2015 filed claim petition in M.C.O.P.No.799 of 2010 under Section 166 of the Motor Vehicles Act, claiming a sum of Rs.5,00,000/- as compensation for the injuries sustained by him against the respondents.

4.The 1st respondent in both the appeals, remained exparte before the Tribunal.

5.The 2nd respondent-Insurance Company, being the insurer of the Jeep filed separate counter statements in both the claim petitions and denied all the averments made by the claimants in both the claim petitions. According to the 2nd respondent, the accident has occurred only due to the negligence on the part of the deceased, who only drove the Jeep in a rash and negligent manner and caused the accident. At the time of accident, six persons traveled in the Jeep in violation of policy conditions as well as Motor Vehicles Act. The appellants in C.M.A.No.896 of 2015 have to prove that they are the legal heirs of the deceased by producing valid documents. At the time of accident, the driver of the Jeep was not having valid driving license to drive the Jeep and hence, the 2nd respondent is not liable to pay any compensation to the claimants in both the claim petitions. The 2nd respondent denied the age, avocation and income of both the deceased as well as appellant in C.M.A.No.897 of 2015 and the nature of injuries, disability and period of treatment taken by the appellant in C.M.A.No.897 of 2015. In any event, the quantum of compensation claimed by the claimants in both the claim petitions are highly excessive and prayed for dismissal of both the claim petitions.

6.Before the Tribunal, the 1st appellant in both the appeals examined themselves as P.W.1 & P.W.2 respectively and Dr.Thambiraj was examined as P.W.3 and 9 documents were marked as Exs.P1 to P9. On behalf of the 2nd respondent-Insurance Company, two witnesses were examined as R.W.1 and R.W.2 and two documents were marked as Exs.R1 & R2.

7.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident has occurred due to negligence on the part of the driver of the Jeep and directed the 1st respondent - owner of the Jeep to pay a sum of Rs.4,85,000/- and Rs.60,000/- as compensation to the appellants in both the appeals respectively. The Tribunal dismissed the claim petitions as against the 2nd respondent-Insurance Company on the ground that the driver of the Jeep was not possessing valid driving license on the date of accident.

8.Challenging the said common award dated 16.04.2012 made in M.C.O.P.Nos.666 & 799 of 2010 dismissing the claim petition as against the 2nd respondent as well as for enhancement of compensation, the appellants have come out with the present appeals.

C.M.A.No.896 of 2015:

9.The learned counsel appearing for the appellants contended that the award of the Tribunal exonerating the 2nd respondent-Insurance Company on the ground that the driver of the Jeep did not possess driving license is erroneous. The Tribunal failed to see that the deceased in order to avoid the accident with the oncoming vehicle, turned the Jeep and unfortunately the Jeep capsized. Due to the injuries sustained by the driver in the accident, he died. In a claim petition filed under Section 163(A) of the Motor Vehicles Act, the claimants need not prove the negligence and therefore, the appellants are entitled to compensation. The Tribunal erroneously dismissed the claim petitions as against the Insurance Company on the ground that owner of the vehicle remained exparte before the Tribunal. The learned counsel appearing for the appellants further submitted that the deceased was employed as Driver and was earning a sum of Rs.9,000/- per month at the time of accident. The Hon'ble Apex Court has fixed a sum of Rs.12,000/- as monthly income and granted 30% enhancement towards future prospects for the accident happened in the year 2011. The compensation awarded by the Tribunal towards loss of love and affection, loss of consortium, funeral expenses and transportation are meagre. The Tribunal has not granted any amount towards loss of estate.

C.M.A.No.897 of 2015:

10.The learned counsel appearing for the appellant further submitted that though the appellant filed claim petition in M.C.O.P.No.799 of 2010 under Section 166 of the Motor Vehicles Act, to do the complete justice, this Court empowered to award compensation under Section 163(A) by moulding the relief. Being the occupant of the Jeep, the appellant also sustained grievous injuries, fracture in the left leg and he has taken treatment as inpatient from 08.05.2010 to 05.06.2010. The appellant was a Mason Coolie, was aged 48 years and was earning a sum of Rs.7,500/- per month at the time of accident. The Tribunal ought to have fixed a sum of Rs.12,000/- as monthly income and granted 30% enhancement towards future prospects. The compensation awarded by the Tribunal in both the cases are very low and prayed for setting aside the portion of the award dismissing the claim petition as against the Insurance Company and for enhancement of compensation.

11.Per contra, the learned counsel appearing for the 2nd respondent-Insurance Company contended that the deceased was a tort feasor and he is responsible for the accident and hence, the legal heirs of the deceased tort feasor are not entitled to get compensation. The policy issued by the 2nd respondent-Insurance Company is 'Act Only Policy'. The occupants of Jeep are not covered under the policy issued by the 2nd respondent-Insurance Company. It covers only third party liability. No premium was collected to cover the risk of Personal Accident coverage and therefore, Insurance Company is not liable to pay any compensation. The Tribunal considering the entire materials, rightly dismissed the claim petitions as against the 2nd respondent-Insurance Company and prayed for dismissal of both the appeals.

12.Though notice has been served on the 1st respondent and his name is printed in the cause list, there is no representation for him, either in person or through counsel.

13.Heard the learned counsel appearing for the appellants in both the appeals as well as the learned counsel appearing for the 2nd respondent and perused the entire materials on record.

14.As far as appellants in C.M.A.No.896 of 2015 are concerned, they have filed claim petition under Section 163(A) of the Motor Vehicles Act. The reason for enacting Section 163(A) is for speedy disposal of claim petition and therefore, certain guidelines have been formulated. In the claim petition filed under Section 163(A) of the Motor Vehicles Act, the claimants need not plead and prove the negligence on the part of the driver or owner of the vehicle. This being a special provision, a limit has been fixed with regard to income of the deceased or injured. The claimants in case of death can maintain the claim petition under Section 163(A), only if annual income of the deceased is Rs.40,000/- or less. The appellants in C.M.A.No.896 of 2015 in the claim petition have stated that deceased was earning a sum of Rs.9,000/- per month. In the grounds raised in C.M.A.No.896 of 2015, the appellants have stated that as per the judgment of the Hon'ble Apex Court, the Tribunal ought to have fixed a monthly income of the deceased at Rs.12,000/-. As per this claim of appellants, the annual income of the deceased will be more than Rs.40,000/-. The Tribunal, in the absence of any evidence with regard to monthly income of the deceased, fixed monthly income of the deceased at Rs.4,000/- which would come to Rs.48,000/- per annum, which exceeds the maximum limit of the annual income fixed under Section 163(A) of the Motor Vehicles Act. The Honb'le Apex Court in the judgment reported in 2004 (1) TN MAC (SC) 193 [Deepal Girishbhai Soni and others Vs. United India Insurance Co. Ltd., Baroda], held that the proceedings under Section 163-A of the Act being a social security provision, providing for a distinct scheme, only those persons whose annual income is up to Rs.40,000/- can take the benefit, invoking the provisions of Section 163-A of the Act. As per the judgment of the Hon'ble Apex Court reported in 2004 (1) TN MAC (SC) 193, cited supra, when the annual income of the deceased or injured is more than Rs.40,000/-, the claim petition under Section 163(A) is not maintainable. In view of the fact that annual income of the deceased is more than Rs.40,000/- and the judgment of the Hon'ble Apex Court referred to above, the appellants in C.M.A.No.896 of 2015 are not entitled to compensation in the claim petition filed under Section 163(A) of the Motor Vehicles Act.

15.As far as appellant in C.M.A.No.897 of 2015 is concerned, he was an occupant of the Jeep at the time of accident. It is submitted by the learned counsel for the 2nd respondent that policy taken by the owner of the vehicle is only Act Policy. In the Act Policy, the liability of Insurance Company is only with regard to third parties. The risk of occupants of four wheeler is not covered under the Act Policy. Unless the owner of the vehicle pays extra premium to cover the risk of occupants of the four wheeler, the Insurance Company is not liable to pay any compensation to the occupants of the four wheeler in the accident.

16.In the present case, it is the case of the appellant in C.M.A.No.897 of 2015 that owner of the Jeep paid extra premium to cover the risk of the occupants and driver of the Jeep. On perusal of Ex.R2/Insurance Policy, it is seen that there is no extra premium paid by the owner to cover the risk of driver or occupant of the car. Hence, the appellant is not entitled for any compensation under Personal Accident coverage. In view of the same, there is no error in the order of the learned Judge warranting interference by this Court.

17.In the result:

(i) C.M.A.No.896 of 2015 is dismissed and the compensation awarded by the Tribunal at Rs.4,85,000/- along with interest and costs is confirmed. The 1st respondent is directed to deposit the award amount along with interest and costs, less the amount if any already deposited, within a period of eight weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P.No.666 of 2010 on the file of the Motor Accident Claims Tribunal, Sub Court, Sathyamangalam. On such deposit, the appellants 1, 4 & 5 are permitted to withdraw their respective share of the award amount as per the ratio of apportionment fixed by the Tribunal along with proportionate interest and costs after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal. The share of the minor appellants 2 & 3 are directed to be deposited in any one of the Nationalized Banks, till the minor appellants 2 & 3 attain majority. On such deposit, the 1st appellant, being the Mother of the minor appellants 2 & 3 is permitted to withdraw the accrued interest once in three months for the welfare of the minor appellants 2 & 3.

(ii)C.M.A.No.897 of 2015 is dismissed and the compensation awarded by the Tribunal at Rs.60,000/- along with interest and costs is confirmed. The 1st respondent is directed to deposit the award amount along with interest and costs, less the amount if any already deposited, within a period of eight weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P.No.799 of 2010 on the file of the Motor Accident Claims Tribunal, Sub Court, Sathyamangalam. On such deposit, the appellant is permitted to withdraw the award amount along with interest and costs after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal. No costs. Both the appeals are dismissed as against the 2nd respondent.

SD/-
ASSISTANT REGISTRAR

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SUB ASSISTANT REGISTRAR

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To

The Subordinate Judge,
Motor Accident Claims Tribunal,
Sathyamangalam.

Copy to

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

+1cc to Mrs.I.Malar, Advocate Sr.66182

vbm[co]
srg 16/02/2022