IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 13.07.2022

Delivered on : 01.08.2022

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.M.A.No.626 of 2017
&
C.M.A.No.1040 of 2019

C.M.A.No.626 of 2017:

1.Satheeswari

2.Minor Sandeep

3.Saroja ...Appellants

Vs

1.K.M.Rajendiran

2.Royal Sundaram Alliance Insurance Co., Ltd.,
No.6, Sorrento Towers,
Adyar, Chennai – 20. ...Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, against the Decree and Judgement dated 08.08.2012 made in M.C.O.P.No.255 of 2008 on the file of the Motor Accident Claims Tribunal, II Additional District Judge, Tiruvallur at Poonamallee.

C.M.A.No.1040 of 2019:

Ganesh @ Ganeshan ...Appellant

Vs

1.K.M.Rajendiran

2.Royal Sundaram Alliance Insurance Co., Ltd.,
No.6, Sorrento Towers,
Adyar, Chennai – 20. ...Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, against the Decree and Judgement dated 08.08.2012 made in M.C.O.P.No.256 of 2008 on the file of the Motor Accident Claims Tribunal, II Additional District Judge, Tiruvallur at Poonamallee.

For Appellants : Mr.K.Varadha Kamaraj
(In both Appeals)

For Respondent 2: Mr.K.Vinod
(In both Appeals)

For Respondent 1: Not ready in notice.
(In both Appeals)

COMMON JUDGEMENT

The two appeals emanate from a single accident involving the rider and the pillion rider of TVS Star two wheeler bearing registration No.TN 20 AB 9054. Though a common Judgement is being pronounced, the facts of each case is herein below extracted separately.

C.M.A.No.626 of 2017:

2. C.M.A.No.626 of 2017 is filed challenging the order passed

in M.C.O.P.No.255 of 2008. This petition is filed by the legal representatives of one Mugunthan, who was 27 years old at the time of his death and was working as a Tiles Fitter Mason. Originally this claim petition was filed under Section 163 A of the Motor Vehicles Act, hereinafter called the Act. The monthly income was shown as a sum of Rs.10,000/- and a total compensation of Rs.17,50,000/- was claimed, which was however restricted to a sum of Rs.6,00,000/-.

3. When the claim petition was initially filed the narration was as follows:

> *"On 18.06.2007 at about 8.30 P.M., the petitioner proceeding his two wheeler TVS Star bearing registration No.TN 20 AB 9054 with pillion rider one Mr.Ganesh from Pannur to Maduravoyal while nearing Paramount Hotel at Sriperumputhur bye pass road the the 1st respondent lorry bearing reg. no.TN 30 J 3958, parking middle of the road as a result, the rider of the bike Mugunthan died on the spot and pillion rider sustained grievous injuries".*

4. Thereafter, the claim petition was amended as one under Section 166 of the Act. As per second amendment in I.A.No.1421 of 2010, by order dated 03.12.2010, the restriction of the claim amount was deleted. Thereafter, the case that the accident was the result of the lorry reversing and hitting the deceased Mugunthan was introduced.

5. Once again it appears that there has been an amendment and the claim petition was once again converted as one under Section 163 A and the monthly income reduced to a sum of Rs.3,330/-. The petitioners are the wife, child and the mother of the deceased Mugunthan.

C.M.A.No.1040 of 2019

6. C.M.A.No.1040 of 2019 is filed challenging the award passed in M.C.O.P.No.256 of 2008. This claim petition is filed by the pillion rider, Ganesh. He would contend that he was aged about 26 years and is also employed as Tiles Fitter Mason and the monthly income was shown as Rs.10,000/-. Even in this claim petition the original narration of the accident was that the deceased Mugunthan, rider of the bike dashed against the lorry which parked on the edge of the mud portion of the road. The compensation claimed was a sum of Rs.3,35,000/-, restricted to a sum of Rs.2,00,000/-.

7. The 2nd respondent / Insurance Company alone had filed a counter, in which they would contend that as regards Claim petition in M.C.O.P.No.255 of 2008, the deceased himself was a tortfeasor and he was driving the vehicle without a valid driving licence and Insurance. It is also stated that the deceased Mugunthan was under the influence of alcohol and hit the vehicle parked on the mud portion

of the road, which had its parking lights on. The Insurance Company would also submit that it was the deceased who was prosecuted by the Police under Section 304 A of the IPC.

8. An additional counter has also been filed by the Insurance Company, in which they would submit that the claim was not maintainable. They would submit that in the FIR lodged by one J.Jenson, an eye witness who claims that he was driving another motor cycle along side the deceased and that the lorry was parked on the left hand side on the mud portion of the road. He would submit that after he crossed the lorry, he heard a bang and when he went and checked the reason for the noise, he found that the said Mugunthan had hit the rear of the parked lorry, as a result of which, the said Mugunthan and the pillion rider had sustained injuries and the said Mugunthan had died on the spot.

9. The Insurance Company would further contend that the appellant herein have not impleaded the owner and the insurer of the motorcycle. The FIR had also been closed as *auction dropped* since the said Mugunthan has been shown as accused and he had died. Thereafter, the appellants have amended column no.23, to amend the same to the case of the motorcycle being hit when the lorry was reversing.

10. The 2nd respondent Insurance Company would further contend that the reasons given for the amendment would also prove that the amendment has been brought about to somehow claim compensation from the Insurance Company. The appellants have stated that the earlier narration about the accident as stated by Ganeshan, the appellant in M.C.O.P.No.256 of 2008 was on account of the fact that he was suffering from ***"Selective Amnesia"***. Therefore, the Insurance Company would submit that since the rider

of the bike was himself a tortfeasor the appellants are not entitled to the compensation.

11. The Tribunal by its order dated 08.08.2012 was pleased to hold that the accident was only on account of the negligence of the deceased Mugunthan, who was riding the motorcycle. The order of the Tribunal would also indicate that the said Mugunthan was driving the vehicle without holding a valid driving licence. Since the Tribunal had come to the conclusion that the accident was on account of the negligence of Mugunthan it held that the petitioners in M.C.O.P.No.255 of 2008 was entitled only for a compensation of Rs.50,000/- under Section 140 of the Act.

12. As regards the claim in M.C.O.P.No.256 of 2008, the Tribunal would submit that since he has not impleaded the owner and the insurer of the motor cycle, he was entitled only to a sum of Rs.25,000/- under Section 140 of the Motor Vehicle Act. It is

challenging this award that the petitioners in both these petitions are before this Court.

13. Mr.K.Varadha Kamaraj, learned counsel appearing on behalf of the appellants would submit that the claim is one under Section 163 A. Therefore, the appellants are not required to plead or establish that the death or the permanent disability was due to any wrongful act or negligence or default on the part of the owner of the vehicle concerned. Therefore, the Tribunal has erred in awarding only a sum of Rs.50,000/- for the death and Rs.25,000/- to the petitioner in M.C.O.P.No.256 of 2008 for his injuries.

14. Per contra, Mr.K.Vinod, learned counsel appearing for the Insurance Company would raise a preliminary objection stating that the very claim petition under Section 163 A is not maintainable in the case of the petitioners in M.C.O.P.No.255 of 2008 since the income

that was originally pleaded was a sum of Rs.10,000/-, which meant that the annual income was over a sum of Rs.40,000/-. The learned counsel would submit that an application under Section 163 A cannot be filed by persons whose annual income exceeds Rs.40,000/-, as the object of this Section was to provide immediate succour to the people who come from financially weaker section and who are unable to tide over the immediate crises that has hit them.

15. In Support of his submissions, the learned counsel would rely upon the following Judgements:

(i) ***2004 ACJ 934*** – Deepal Girishbhai Soni Vs. United India Insurance Co., Ltd.,

(ii) ***2009 SCC Online Mad 844*** – The New India Assurance Co., Ltd., Vs. Er.K.Jothilingam.

(iii) ***2016 ACJ 2529*** – Janardhanan.P Vs. Kunhiraman.P.K. and another

(iv) ***2022 ACJ 246*** – Royal Sundaram Alliance Ins. Co. Ltd., Vs. Manickam and others.

In all these Judgements, the principle enunciated is that where the income of the deceased is more than Rs.40,000/-, then an application under Section 163 A was not maintainable.

16. In the case of ***Deepal Girishbhai Soni Vs. United India Insurance Co., Ltd.,*** the Hon'ble Supreme Court has further held that this Section would apply only in the case where the annual income is a sum of Rs.40,000/- and the income cannot be scaled down. A similar view was taken by the Kerala High Court in the Judgement of ***Janardhanan.P Vs. Kunhiraman.P.K. and another*** cited supra.

17. Therefore, the learned counsel for the Insurance Company would submit that the claim petition filed by the legal representatives of the deceased Mugunthan was not maintainable.

18. As regards the claim in M.C.O.P.No.256 of 2008, the learned counsel for the Insurance Company would submit that since the accident had occurred only on account of the negligence of the said Mugunthan, he cannot make claim against the owner and insurer of the Lorry, viz., the respondents herein. That apart, they had not made the owner and insurer of the motorcycle as parties to the proceedings. The learned counsel would however concede that since the Insurance Company had not filed an appeal, the award can be confirmed.

19. Mr.K.Varadha Kamaraj's argument is to the effect that the income after the amendment has been scaled down to the extent provided under Section 163 A and therefore the claim petition was very much in order. That apart, the claim has been converted to one

under Section 166. Therefore, the petitioners in M.C.O.P.No.255 of 2008 can be awarded compensation.

20. The learned counsel would rely on the Judgements reported in ***2014 (1) TN MAC 481 – Puttamma & others Vs. K.L.Narayana Reddy & another,*** particularly with reference to paragraph No.39 and ***2019 (1) TN MAC 293 – Chinnathamani Vs. Amman Granties,*** with reference to paragraph no.14.

21. Heard the learned counsels on the either side and perused the documents.

22. From a perusal of the FIR and the claim petition originally filed by both the petitioners, it is very clear that the accident had occurred only on account of the negligence of the deceased Mugunthan, since he had gone and rammed against the parked lorry,

that too one which was parked on the mud portion on the extreme left hand side of the road.

23. Therefore, the legal representatives of the deceased Mugunthan cannot seek compensation under Section 163 A or under Section 166 as the negligence has not been proved against the driver of the lorry. The very fact that the appellants have first filed the claim petition under Section 163 A, later amended it as one under Section 166 and once again amended it under Section 163 A, would clearly show that the appellants have not come with a definite case and their only attempt is to receive compensation under one ground or the other.

24. Further, the original income was shown as a sum of Rs.10,000/- and in the second amendment, the claim petition had been amended as one under Section 163 A, and the monthly income had been reduced to a sum of Rs.3,330/-. Therefore, the claim petition in

M.C.O.P.No.255 of 2008 deserves to be rejected both on the ground that:

(i)The claim petition in respect of whose death the compensation was sought for is the tortfeasor himself.

(ii)The annual income far exceeds the sum of Rs.40,000/-.

25. Therefore, following the dicta in the Judgement in ***2004 ACJ 934*** – Deepal Girishbhai Soni Vs. United India Insurance Co., Ltd., as enunciated in paragraph Nos.51 and 53, which is herein below extracted, the petition filed by the petitioners in M.C.O.P.No.255 of 2008 is not maintainable.

"51.The scheme as envisaged under Section 163-A, in our opinion, leaves no manner of doubt that by reason thereof the rights and obligations of the parties are to be determined finally. The amount of compensation payable

under the aforementioned provisions is not to be altered or varied in any other proceedings. It does not contain any provision providing for set off against a higher compensation unlike Section 140. In terms of the said provision, a distinct and specified class of citizens, namely, persons whose income per annum is Rs. 40,000/- or less is covered thereunder whereas Sections 140 and 166 cater to all sections of society.

53.Although the Act is a beneficial one and, thus, deserves liberal construction with a view to implementing the legislative intent but it is trite that where such beneficial legislation has a scheme of its own and there is no vagueness or doubt therein, the court would not travel beyond the same and extend the scope of the statute on the pretext of extending the statutory benefit to those who are not covered thereby. (See Regional Director, *Employees' State Insurance Corporation, Trichur Vs. Ramanuja Match Industries, [AIR 1985 SC 278 : (1985) 1 SCC 218].”*

This Judgement has been followed by the Division Bench of this Court in the Judgement reported in ***2009 SCC Online Mad 844 = 2011 ACJ 333*** – *The New India Assurance Co., Ltd., Vs. Er.K.Jothilingam.*

26. Once again the Judgement reported in ***2022 ACJ 246 – Royal Sundaram Alliance Ins., Co., Ltd., Vs. Manickam and others.,*** the Bench after following the Judgement in ***2020 ACJ 627 -*** *Ramkhiladi Vs. United India Insurance Co., Ltd.,* and ***2004 ACJ 934*** – Deepal Girishbhai Soni Vs. United India Insurance Co., Ltd., has observed as follows:

“14. Further, in the decision of the Larger Bench of the Supreme Court reported in 2004 (1) TN MAC 193

(SC) = 2004 (5) SCC 385 (Deepal Girishbhai Soni Vs. United India Insurance Company Ltd.), the Supreme Court had considered elaborately the scope and the class of persons entitled to file petition under Section 163-A of the Motor Vehicles Act and the amount payable in such proceedings. In that case, the Apex Court held that only a distinct and specified class of citizens, namely persons whose income per annum is Rs.40,000/- or less, can file application under Section 163-A and that the petition filed under Section 166 cannot be decided under Section 163-A."

27. The Judgement in the case of ***2020 ACJ 627 -*** *Ramkhiladi Vs. United India Insurance Co., Ltd.,* would squarely apply to the case on hand since the claimants are the legal representatives of the deceased Mugunthan, who was stated to be earning a sum in excess of

Rs.40,000/- per annum. That apart, he is the tortfeasor himself.

28. As regards the claimant in C.M.A.No.1040 of 2019, though the appellant is entitled to compensation, he is entitled to compensation only from the owner and the insurer of the motorcycle, in which he was travelling since even according to him, the accident had occurred only on account of the negligence on the part of the driver of the bike, namely, Mugunthan.

29. The Tribunal has in very great detail considered the evidence both oral as well as documentary and held that no negligence can be fastened on the lorry that was parked. The subsequent amendment that the accident had occurred while the lorry was reversing his nothing but a blatant attempt to somehow wrangle a compensation.

30. Therefore, I find no reasons to interfere with the order

passed by the Tribunal below. Though Mr.K.Vinod, learned counsel for the Insurance Company has raised an issue with reference to maintainability of the claim petitions, since this was not urged before the Tribunal, the award as passed is confirmed.

31. The Insurance company is directed to deposit the award amount along with interest and costs, less the amount already deposited within a period of six weeks from the date of receipt of a copy of this Judgement, to the credit of M.C.O.P.Nos.255 & 256 of 2008. On such deposit, the appellants are permitted to withdraw the award amount, after adjusting the amount, if any, already withdrawn, by filing necessary application before the Tribunal.

32. The share of the minor appellant, namely, the 2nd appellant in C.M.A.No.626 of 2017 is directed to be deposited in Fixed Deposit in

any one of the Nationalised Banks till he attains majority. On such deposit, the 1st appellant being the mother of the minor appellant is permitted to withdraw the accrued interest once in every three months for the welfare of the minor appellant.

33. In the result, the Civil Miscellaneous Appeals are dismissed. No costs.

01.08.2022

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Index : Yes/No
Speaking order/non-speaking order

To
The Motor Accident Claims Tribunal,
II Additional District Judge, Tiruvallur at
Poonamallee.

P.T.ASHA, J.,

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Pre-delivery order in
C.M.A.No.626 of 2017 &
C.M.A.No.1040 of 2019

01.08.2022