



C.M.A.No.2956 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Reserved on : 13.03.2023

Pronounced on : 31.07.2023

CORAM:

THE HONOURABLE Mrs.JUSTICE R.KALAIMATHI

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1.Thangammal
2.Umamaheswari
3.Karnan

... Appellants

vs.

1.Jasbir Singh
2.National Insurance Company Limited,
Chennai 600 040.

... Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, against the Decree and Judgment dated 17.04.2013 made in M.C.O.P.No.115 of 2009 on the file of Motor Accidents Claims Tribunal, (Subordinate Judge), Tiruchengode.

For Appellants : Mr.K.Varadha Kamaraj

For Respondent 1 : No Appearance

For Respondent 2 : Mr.S.Arunkumar

JUDGMENT



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WEB COPY This Civil Miscellaneous Appeal has been filed by the appellant / claimant herein against the Judgment and decree passed in M.C.O.P.No115 of 2009 dated 17.04.2013 on the file of the Motor Accident Claims Tribunal, Chennai (Subordinate Judge), Tiruchengode for enhancement of compensation.

2. The claimant filed the claim petition under Section 163A of the Motor Vehicles Act claiming compensation of Rs.7,00,000/- in M.C.O.P.No.115 of 2009 from the respondents.

3. The learned Tribunal, after hearing both sides arguments and upon considering the oral and documentary evidences put forth, has dismissed the claim petition by holding that the second respondent / Insurance Company has established that there was no rash and negligent act on the part of the driver of the TATA Sumo bearing registration No. TN 01 W 5188, the Insurance Company is not liable to pay compensation of the petitioners and ultimately the claim petition was dismissed.



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WEB COPY 4. The learned counsel appearing for the appellants / claimants would strenuously contend that the tribunal has dismissed the claim petition by holding that there was no negligent act on the part of the driver of TATA Sumo car. To claim under Section 163A of Motor Vehicles Act, negligence need not be pleaded and proved, therefore, as per Section 163A of Motor Vehicles Act as appended in schedule - II the appellants are entitled for compensation.

5. Per contra, learned counsel for the second respondent / Insurance Company Thiru.S.Arun Kumar would vehemently argue that the claim petition has been filed under Section 163A and the structured formula given under Tmt.Sarala varma case cannot be followed and prayed for dismissal.

6. Succinctly stated the facts are: on 20.07.2007 at about 06.00 pm., while the deceased Devaraj was riding his motor cycle bearing registration No.TN 28 T 8055 along the B.P.Agraharam to Barrage



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Road towards east direction near the barrage, the driver of TATA Sumo bearing registration No.TN 01 W 5188. At that time the driver of the TATA Sumo had stationed towards the same direction for carrying out some work, suddenly and negligently opened the front left side door of the vehicle without noticing the deceased vehicle. The deceased fell down and sustained fatal injuries and he was taken to the Government Hospital, Erode where he succumbed to the injuries.

7. On behalf of the second respondent / Insurance Company the said claim was resisted by filing counter to the effect that on the above said date the deceased Devaraj drove the above said Motorcycle in a rash and negligent manner and dashed on the front left side door of Tata Sumo Car and thereby sustained injuries and on the next date he died, therefore accident happened only due to rash and negligent driving of the deceased. The Police closed the case as charge abated, therefore there is no negligence on the part of the driver of the TATA Sumo Car and hence the Insurance Company is not liable to pay compensation and prayed for dismissal of the



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claim petition.

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8. The claim petition is filed under Section 163A of the Motor Vehicles Act, 1988 and Section 163A is extracted hereunder:

"(1) Notwithstanding anything contained in this Act or in any other law for the time being in force or instrument having the force of law, the owner of the motor vehicle or the authorized insurer shall be liable to pay in the case of death or permanent disablement due to accident arising out of the use of motor vehicle, compensation, as indicated in the Second Schedule, to the legal heirs or the victim, as the case may be."

9. In ***Sivaji and another -vs- Divisional Manager United India Insurance Company Limited and others, Civil Appeal No.2816 of 2018***, of Karnataka High Court the appellants are parents of Shaji Shivaji Dudhade, who was the driver of a car bearing registration No. MH-06/W-604, which met with an accident on 15 June 2010.



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The accident occurred when the car dashed into a truck, bearing registration No. KA-25/B-5363, resulting in his death; the death of two other persons and injuries to two more persons, all of whom were travelling in the car. The appellants filed a claim petition seeking compensation under Section 163A of the Motor Vehicles Act, 1988. The tribunal noted that since the claim petition had been filed under Section 163A of the Act, the question of proving that the accident happened due to the rash and negligent act of the driver did not arise. By its award dated 30.07.2011, the tribunal allowed a claim of Rs.4,60,800/- together with interest at the rate of 9% per annum. The insurer as well as the appellants filed an appeal before the High Court of Karnataka. The High Court by this impugned Judgment allowed the insurers appeal and set aside the order of the tribunal. The Hon'ble Supreme Court having discussed the observations made in *United India Insurance Company Limited -vs- Sunil Kumar and another, reported in AIR 2017 SC 5710*, chosen to allow the appeal.

10. It is relevant to refer to the Judgments of Hon'ble Supreme



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Court in *United India Insurance Company Limited -vs- Sunil Kumar*

and another, reported in 2019(12) SCC 398, after discussing Sinitha's

case, Deepal Girishbhai Soni's case and Hansrajbhai Case v. Kodala and other's case, the Hon'ble Supreme Court held that in a proceeding under Section 163 A of the Act, it is open for the insurer to raise any defence of negligence on the part of the victim.

11. Therefore, it is made clear that if the claim is made under Section 163A of the Motor Vehicles Act, then the claimant is not required to plead and prove as to the factum of negligence. Therefore, the claim under Section 163A is perfectly correct.

12. Admittedly claim is made against the owner of the TATA Sumo Car and its insurer herein. The legal heirs of the deceased Devaraj namely his wife, daughter and his son have filed the claim.

13. At the instance of one Jagadeesh First Information Report was came to be registered against the deceased vide Crime no.451 of



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2017 under Sections 279, 337 of IPC and the case was closed as charge abated. It is the evidence of Investigating Officer / R.W.2 that the case was closed as charge abated. The Insurance Policy of the TATA Sumo Car is Ex.R1. The Policy is a package policy. The claimants herein who are the legal heirs of deceased Devaraj are third parties to the said Insurance Policy.

14. It is the evidence of P.W.1 / Thangammal wife of the deceased Devaraj that her husband was an agriculturalist and earning sum of Rs.3300/- per month. The date of the accident is in the year 2007. Based on the above said evidence this Court deems fit to fix the income of the deceased at Rs.3300/- per month. P.W.1 has stated that at the time of accident age of her husband was 50 years. To substantiate the same, post mortem certificate of the deceased Ex.P2 alone is available (xerox copy) wherein post mortem certificate pertaining one Umariya is filed. Age of P.W.1 is 44 years. Therefore, this Court deems fit to fix his age as 50 years and as per the law laid down by the Hon'ble Supreme Court in *Smt.Sarala varma and others -vs- Delhi Transport Corporation and others*,



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reported in 2009(7) TANMAC of Supreme Court, the multiplier 13 is

adopted. As regards the deduction for personal and living expenses, if the dependent family members are 2 to 3, 1/3rd is to be deducted. Therefore, the following formula with regard to loss of dependency emerges.

Age of the deceased = 50 years,

multiplier to be adopted as 13, monthly salary is Rs.3300/-

(Rs.3300 - 1/3rd share x 12 x 13 = Rs.3,43,200/-).

15. As per the second schedule claimants are entitled for Rs.2000/- for funeral expenses and for loss of estate Rs.2500/-.

16. The claim petition is filed by the wife, daughter and the son. Out of the total compensation the daughter and son are entitled for a compensation of Rs.30,000/- each and the wife is entitled for a sum of Rs.2,83,200/- with proportionate interest.



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17. In the result,

WEB COPY (i) The Civil Miscellaneous Appeal is **partly allowed**. No costs.

(ii) The compensation awarded by this Court is of **Rs.3,43,200/-**

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(iii) The 2nd respondent / Insurance Company is directed to deposit the compensation amount i.e., **Rs.3,43,200/-** together with interest at the rate of 7.5% per annum **from the date of numbering of the petition** till the date of deposit to the credit of M.C.O.P.No.115 of 2009 on the file of the Motor Accident Claims Tribunal, Chennai (Subordinate Judge), Tiruchengode, within a period of *eight weeks* from the date of receipt of a copy of this Judgment.

(iv) On such deposit being made, the appellants / claimants are at liberty to withdraw the same on filing of cheque petition. The claimants are directed to pay the requisite Court fee for the enhanced compensation amount, if required. The Tribunal below shall disburse the enhanced amount upon production of the certified copy showing proof of payment of Court fee by the claimant.



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Index : Yes/No

Speaking / Non-speaking order
rna

To

1. The Motor Accident Claims Tribunal,
(Subordinate Judge), Tiruchengode.
2. The Section Officer,
V.R.Section,
High Court of Madras,
Chennai.

R.KALAIMATHI, J.,

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