IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.09.2023

CORAM:

THE HONOURABLE MR. JUSTICE K. RAJASEKAR

C.M.A. No. 2270 of 2017
and C.M.P. No. 12129 of 2017

The Divisional Manager,
The Bajaj Allianz General Insurance
Company Limited,
No.25/26, Pink Plaza,
Nungambakkam, Chennai. ... Appellant/ 2nd Respondent

Vs.

1. Pachaimmal

2. Arumugam … Respondents 1 &2 / Petitioners

3. A. Venkatesan … 3rd Respondents / 1st Respondent

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and decree dated 07.12.2016 made in M.C.O.P. No. 35 of 2016 on the file of the Special Sub Judge, Motor Accident Claims Tribunal, Tiruvannamalai.

For Appellant	:	M/s. J. Michael Visuvasam
For RR 1 to 2	:	Mr. Amar. P. Pandiya (for Mr. B. Jawahar)
For R3	:	Ex-parte

JUDGMENT

This appeal has been filed by the insurane company, challenging the Judgment and award made in M.C.O.P. No. 35 of 2016, dated 07.12.2016 on the file of the Special Sub Judge, Motor Accident Claims Tribunal, Tiruvannamalai., wherein the Tribunal has awarded compensation for a sum of Rs.11,78,000/- along with interest @ 7.5% per annum from the date of claim petition till the date of realisation in favour of the claimants for the death of one Pasupathy.

2. For the sake of convenience, the parties are referred herein according to their litigative status before the Tribunal.

3. On 17.08.2011 at about 15:30 hours, the deceased Pasupathi who is a cleaner of the first respondent's lorry bearing Registration No. TN-18-F-7329, which was parked at the back side of the Minjur Bus stand, climbed the cabin of the lorry to take the tarpaulin to cover the goods of the lorry, at that time, while he was on the top of the lorry, the driver of the lorry suddenly moved the lorry in negligent manner which resulted in deceased touching live electric wire and thrown out of the lorry, and sustained injuries. He was immediately taken to Kilpauk Medical College Hospital for

treatment and after four days, he succumbed to injuries on 21.08.2011. In this regard, a criminal case was also registered in Cr.No.380 of 2011 on the file of Minjoor Police Station under section 174 of Cr.P.C Electric shock for his suspicious death. Since the deceased was died in the involvement of motor vehicle, the claimants approached Motor Accident Claims Tribunal and filed a claim petition under section 163-A of Motor Vehicles Act, 1988, stating that the first and second respondents, who are the owner and insurer of the said lorry are jointly and severely liable to pay compensation for a sum of Rs.10,00,000/- for the death of Pasupathi

4. The first respondent has not contested the claim and remained ex-parte and the second respondent - insurance company filed a counter and contended that the criminal case was registered under section 174 of Cr.P.C. for suspicious death of the deceased by the police. Hence, the deceased was not died due to the motor vehicle accident, since the deceased was died only due to the electrocution and not the case of road traffic accident. The insurance company also further contended that, at the time of accident, the driver of the lorry was not having a valid driving licence, so, there is a violation of policy condition, hence, insurance company is not liable to

indemnify the owner of the vehicle and prays to dismiss the claim petition.

5. Before the Tribunal, on the side of the claimants, P.W.1 and P.W.2 were examined and Exs.P.1 and P.2 were marked, on the side of the respondents, R.W.1 and R.W.2 were examined and Ex.R.1 marked.

6. Based on the evidence placed on record, the Tribunal in point No.1, has held that even though in the petition, the claimants have quoted the provision under section 163-A of the Motor Vehicles Act for claiming compensation. The evidence has been adduced through the negligent act on the part of the driver of the lorry, hence, the claim petition is to be treated under section 166 of the Motor Vehicles Act, since quoting the wrong provision of law is not impediment in granting proper relief and further held that the deceased was died only due to the negligent act on the part of the driver of the lorry bearing Registration No. TN-18-F-7329. In point No.2, the Tribunal has quantified and granted compensation for a sum of Rs.11,78,000/- along with interest @ 7.5% per annum from the date of filing of petition till the date of realization to the claimants.

7. Aggrieved over the award of compensation under section 166 of the Motor Vehicles Act, the insurance company has come forward with this appeal.

8. The learned counsel Mr. J. Michael Visuvasam, appearing for the insurance company submitted that originally the petition was filed by the claimants under section 163-A of the Motor Vehicles Act, thereafter they have amended the claim petition to section 166 of the Motor Vehicles Act after filing of the counter by the respondents. During the stage of evidence, the claimants have examined P.W.2 to prove the negligent act of the driver of lorry. Based on the above evidence, the Tribunal has wrongly proceeded that the claimants are entitled to claim compensation under section 166 of the Motor Vehicles Act, which is not proper and also contended that the Tribunal has no power to convert the claim petition filed under section 163-A to section 166 of the Motor Vehicles Act and prays to set aside the award.

9. Per contra, the learned counsel appearing for the claimants submitted that, this Court has held that filing of claim petition under wrong provision of law could not be the ground to reject the claim made by the

claimants. This is only a technical plea and the Tribunal based on the context and substance of the claim petition has rightly came to the conclusion that the petition has been filed under section 166 of the Motor Vehicles Act and wrong provision of section 163-A is to be condoned, hence prays to confirm the award.

10. I have considered the submission made on both sides and perused the materials available on record:

11. Hon'ble Apex Court in ***"Deepal Girishbhai Soni and other vs. United India Insurance Co. Ltd., [2004 ACJ 934]*** held that, compensation awarded under sections 163-A and 166 of the Motor Vehicles Act are both independent in nature and the claimants are not entitled to invoke both the provisions for getting compensation. The claimants have to decide which provision they are seeking compensation and accordingly, the evidences have to be adduced to substantiate their case. The Hon'ble Apex Court has held in paragraph no.51 as follows:

> *"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 provisions, 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."

12. The learned counsel for the claimants relied on the judgment of this Court passed in ***P. Radhakrishnan and others vs. M. Murugesan and another [C.M.A. No. 3377 of 2004, dated 20.04.2011]***, wherein this Court has occasion to consider the judgement of the Apex Court cited above and has held that in paragraph nos. 9 to 11 as follows:

"9. The question that arose on appeal before the Honourable Supreme Court in Deepal Girishbhai Soni vs. United India Insurance Company Limited [2004-5-SCC-385] was whether a proceeding under Section 163-A of the Motor Vehicles Act, 1988 is a final proceedings by reason whereof, a claimant who has been granted compensation under Section 163-A is debarred from proceeding with any other further claims on the basis of faulty liability in terms of Section 166. the Honourable supreme Court held thus:

A provision of law providing for compensation is presumed to be final in nature unless a contra indication therefore is found to be in the statute either expressly or by necessary implication.

The scheme envisaged under section 163-A leaves no manner of doubt that by reason thereof the rights and obligations of the parties are to be determined finally. Having regard to the fact that in terms of Section 163-A of the Act read with the second schedule structured formula not only having regard to the fat that in terms of appended thereto, compensation is to be paid on a *structured formula not only having regards to the age of the victim and his income but also the other factors relevant therefore, an award made thereunder, therefore, shall be in full and final settlement of the claim as would appear from the different columns contained in the Second schedule appended to the Act. the same is not interim in nature. Apart from the fact that compensation is to be paid by applying the multiplier method, under the Second schedule, other relevant factors, namely, reduction of one third in consideration of the expenses which the victim would have incurred towards maintaining himself, general injuries and disabilities as also disabilities in non fatal accidents, a notional income for compensation to those who had no income prior to the accident are provided for on required to be considered which is also a clear pointer to the fact that thereby Parliament intended to provide for a final amount of compensation and not an interim one. This together with the other heads of compensation as contained in columns 2 to 6 of the second schedule leave no manner of doubt that Parliament intended to lay down a comprehensive scheme for the purpose of grant of adequate compensation to a section of victims who would required the amount of compensation without fighting any protracted litigation.*

The remedy for payment of compensation both under sections 163-A and 166 of the Motor Vehicles Act begin final and independent of each other as statutorily provided, a claimant cannot pursue his remedies thereunder simultaneously. One, this must opt / elect to go either for a proceeding under Section 163-A or under Section 166 of the Act, but not under both."

It was held by the Honourable Supreme Court that the remedy for payment of compensation both under Sections 163 (A) and 166 are final and a claimant cannot pursue his remedy later under section to the facts of the present case.

10. Section 163-A of the act provides for filing of a claim petition where an accident took place by reason of use of the motor vehicle. It is not necessary to provoke any fault on the *part of the driver of the vehicle. But, to prove any fault on the part of the driver of the vehicle. But, the Tribunal in a proceeding arising under section 166 of the Act is required to hold a full-fledged trial. It is required to collect data on the basis whereof, the amount of compensation can be determined.*

11. In my opinion, the very fact that the claim petition was decided on merits by the Tribunal, like a claim petition filed under section 166 of the Act, is enough to reject the submission of other words. the Tribunal allowed the parties to reject the submission of the learned counsel for the 2nd Respondent Insurance Company. In other words, the Tribunal allowed the parties to prosecute the claim petition as if filed under Section 166 of the Act. Not only that, even Tribunal framed issues on all material pleadings applicable for deciding the claim petition under Section 166, such as issues relating to negligence and whether the claimants are entitled to get compensation from the Respondents and then the Tribunal had allowed the parties to adduce evidence on these issues and then answered them on merits in favour of the claimants. It was held that the deceased died due to the negligence of the driver of offending vehicle."

13. In the present case, the point for consideration is, whether the claimants herein has invoked section 163-A of Motor Vehicles Act with intentionally or they have quoted wrong provision of law at the time of filing the compensation. On perusal of the records, more particularly, the claim petition which shows that originally the claim petition was filed by the claimants under section 166 of the Motor Vehicles Act. Thereafter, there is a correction made by the claimants after deleting the section 166, altered to section 163-A of Motor Vehicles Act to state that the petition has been filed

only under section 163-A of Motor Vehicles Act, similarly the claimants in their pleadings have stated as: "Though F.I.R. was filed under section 174 Cr.P.C., the deceased been employed as a cleaner under first respondent, hence this petition is filed in the Court under Section 163-A of the Motor Vehicles Act. This shows that intentionally the claimants have invoked section 163-A of the Motor Vehicles Act for claiming compensation".

14. The respondents have also filed counter and contended that death of the deceased was not due to the road traffic accident, it was due to electrocution, while he attempted to climb over the cabin for sleeping. To support their contention in Ex.P.1- F.I.R was relied on, wherein the father of the deceased stated that deceased has climbed over the cabin for the purpose of sleeping.

15. The Tribunal without considering this aspect has held that there is a quoting of wrong provision of law, is not a ground to reject granting of compensation. Accordingly, the Tribunal has converted the section 163-A to 166 of the Motor Vehicles Act and awarded compensation. It is settled law that wrong quoting of provision of law is not impediment in granting

remedies to the litigants, especially, in the case of beneficial legislation, wrong quoting of provision is not a ground in rejecting the claim. However, in this case, the records more particularly the pleadings and subsequent conduct of parties changing the provision of claim supports the case of the insurance company that they have contested the claim only U/s. 163-A of the Motor Vehicles Act. The Tribunal has awarded the compensation by invoking section 166 of the Motor Vehicles Act suo motto without looking into the specific pleadings of the claimants therein.

16. The claimants herein pleaded before the Tribunal that, deceased was earning Rs.7,500/- per month, however, they have not produced any evidence to prove the income of the deceased, hence considering the age and nature of avocation of the deceased, the Tribunal by invoking section 166 of the Motor Vehicles Act, fixed notional income of Rs.6,500/- per month and awarded Rs.10,53,000/- under the head loss of income. This Court is of the view that, awarding compensation by invoking section 166 of the Motor Vehicles Act by the Tribunal is not proper and provision under section 163-A of the Motor Vehicles Act is to be made applicable to the claimants herein, who claim compensation for the death of their son.

17. Accordingly, the compensation awarded by the Tribunal is modified as per the provisions of Section 163-A of the Motor Vehicles Act, 1988, the maximum notional annual income of the deceased is fixed as Rs.40,000/- per year. However, the Division Bench of this Court in ***Chinnathamani and Ors.. Vs. Amman Granties and Ors. [2020 ACJ 2677]*** has considered the applicable income ceiling fixed in Second Schedule and has held as follows:

> *7. Among other issues, it has to be examined as to what is the meaning of Consumer Price Index and whether it would be appropriate to apply to Section 163A of the Act while fixing the compensation under the structured formula provided in the Second Schedule and also whether the Consumer Price Index is in consonance with the prevailing cost of living to adequately compensate the victims of the Motor Accident Claims.*
>
> *8. In this regard, let us see the meaning of Consumer Price Index, which is subject to changes in price level of consumer goods and services provided to household. The Consumer Price Index is a statistical estimate constructed by using the prices of sample of representative items, whose prices are collected periodically and sub indices are computed for different categories and sub categories of goods and services to produce the overall index with wages reflecting the share in the total of the Consumer expenditure covered by the index. The annual percentage change in Consumer Price Index, is used as a measure of an inflation. Consumer Price Index can be used to index (that is adjusted for the effect of inflation/notification) to determine the real default wages, salary, pensions, for regulating the price and for deflecting, and therefore, the*

Consumer Price Index is the appropriate index that can be used to determine the income of a person based on the income mentioned in the Second Schedule, which means, the income structured formula mentioned in the Second Schedule will be changed every year based on the Consumer Price Index. Therefore, in the present case also, it would be appropriate to apply the Consumer Price Index for the relevant year by taking the annual income mentioned as per the structured formula in the Second Schedule. Be that as it may, the Central Board of Direct Taxes (CBDT) has been issuing notification from time to time, every year, in which, the Cost Inflation Index is indicated for determining the capital gain index.

9. Now, let us see, what the Cost Inflation Index is. It is a measure of inflation that finds obligation in tax law, when computing long term capital gains on sale of assets. Section 48 of the Income Tax Act, defines the index as what is notified by the Central Government every year, as 75% of the Consumer Price Index for Urban non-salariedemployees for the immediately preceding previous year. Therefore, if the Consumer Price Index is 100 last year, the Cost Inflation Index will be fixed for the current year at 75.

10. In the present case, the income of the deceased was Rs. 9,00,000/- per annum. However, as per the structured formula, for the income during the year 1994, only maximum amount of Rs. 40,000/- can be considered as income of the deceased. The said amount was Rs. 40,000/- fixed in the year 1994 and the same cannot be applied in this case, as the accident has occurred on 06.10.2010. Therefore, it would be inappropriate to provide compensation for a person who sustained injury during the year 1994 at a sum of Rs. 40,000/- and to apply the same amount of Rs. 40,000/- for the victim, who sustained fatal accident, during the year 2010.

11. It is the duty of the Central Government in terms of Section 163-A (3) to amend the Second Schedule from time to time according to the Consumer Price Index, which will vary *due to inflation. But, the Central Government has not revised or amended the Schedule from time to time as per Section 163-A (3).*

12. Under the circumstances, this Court takes Judicial notice of the above facts and decides to give effect to sub-Section (3) of Section 163(A) of the Act to increase the annual income mentioned in the Second Schedule, according to the Consumer Price Index issued by the Government of India from time to time.

13. Now, the question to be decided is, how to determine the Consumer Price Index in accordance with the income fixed by the Government of India. The Central Board of Direct Taxes has been issuing notifications every year, revising the Cost Inflation Index for the purpose of determining the capital gains. As stated above, the Cost Inflation Index is determined as 75% of the Consumer Price Index of the previous year. The Cost Inflation Index, as issued by the Central Board of Direct Taxes, since 1982 to 2018 is as follows:-

S.No.	***Financial Year***	***Cost Inflation Index***
1	*1981-1982*	*100*
2	*1982-1983*	*109*
3	*1983-1984*	*116*
4	*1984-1985*	*125*
5	*1985-1986*	*133*
6	*1986-1987*	*140*
7	*1987-1988*	*150*
8	*1988-1989*	*161*
9	*1989-1990*	*172*
10	*1990-1991*	*182*
11	*1991-1992*	*199*
12	*1992-1993*	*223*
13	*1993-1994*	*244*
14	*1994-1995*	*259*

S.No.	*Financial Year*	*Cost Inflation Index*
15	*1995-1996*	*281*
16	*1996-1997*	*305*
17	*1997-1998*	*331*
18	*1998-1999*	*351*
19	*1999-2000*	*389*
20	*2000-2001*	*406*
21	*2001-2002*	*426*
22	*2002-2003*	*447*
23	*2003-2004*	*463*
24	*2004-2005*	*480*
25	*2005-2006*	*497*
26	*2006-2007*	*519*
27	*2007-2008*	*551*
28	*2008-2009*	*582*
29	*2009-2010*	*632*
30	*2010-2011*	*711*
31	*2011-2012*	*785*
32	*2012-2013*	*852*
33	*2013-2014*	*939*
34	*2014-2015*	*1024*
35	*2015-2016*	*1084*
36	*2016-2017*	*1125*
37	*2017-2018*	*1158*
38	*2018-2019*	*1191*

14. In the above table, the Cost Inflation Index is mentioned from the year 1981-1982 to 2018-2019. It is pertinent to mention that the Central Government has notified the Consumer Price Index based on the Cost of living every year. The Central Board of Direct Taxes has also been issuing Cost Inflation Index by taking 75% of the Consumer Price Index of the *previous year for the purpose of calculating capital gains on assets.*

15. By adopting the Cost Inflation Index as notified by the Central Board of Direct Taxes which is 75% of the Consumer Price Index of the previous year, we can work out Consumer Price Index and apply the same to determine the annual income as per the Second Schedule as on the date of accident. For example, by applying the formula as mentioned below, we can determine maximum income per annum for the year 2017-2018, as mentioned hereunder:-

$$\text{Income as mentioned in Second Schedule} \;X\; \frac{\text{Cost of Inflation Index in the year 2017-2018}}{\text{Cost of Inflation Index for the year 1994-1995}} \;X\; \frac{100}{75}$$

16. The maximum amount of income per annum for the purpose of determining the compensation is Rs. 40,000/- as mentioned in the Second Schedule for the year 1994-1995. If the said amount is taken into consideration by applying the above mentioned formula the maximum income for the year 2017-2018 is as follows:-

$$\text{Rs.40,000/-} \;X\; \frac{1158}{259} \;X\; \frac{100}{75} = \textbf{Rs.2,38,455/-}$$

18. By following the guidelines of the above Division Bench judgment, the maximum ceiling amount for the year 2011 would be **Rs.1,61,647/-**. Since, the income of the deceased claimed by the claimants is below the amount arrived herein, the claimants are entitled to maintain

claim petition under section 163-A of the Motor Vehicles Act. Accordingly, the compensation awarded by the Tribunal is modified as per the provisions of Section 163-A of the Motor Vehicles Act, 1988. The notional annual income of the deceased is hereby fixed as Rs.40,000/- per year, considering the deceased age is 19 years and the year in which the accident has taken place. Since, the claimants herein are two in numbers, after detecting one-third of his total income for his personal expenses, the loss of income is assessed as follows:

Total notional income per annum	=	Rs.40,000/-
Age of the deceased	=	19
As per compensation for fatal accident, vide Para 1 of Second Schedule to Motor Vehicles Act is	=	Rs.7,60,000/-
Deducting (1/3) total income	=	Rs.2,53,333/-
Total loss of income	=	**Rs.5,06,666/-**

19. Hon'ble Apex Court in ***Kurvan Ansari and others vs. Shyam Kishore Murmu and others [2022 ACJ 166]***, has taken a view for the claim petition filed under Section 163-A of the Motor Vehicles Act for the deceased boy aged about 7 years that, since the II Schedule to M.V. Act was not amended inspite of repeated direction by the Hon'ble Apex Court in fixing of notional income more than the income as awarded Rs.40,000/- per

annum, keeping in mind the present cost of living. It has also awarded filial consortium of Rs.40,000/- each to the parents of the deceased and Rs.15,000/- towards funeral expenses. However, in this case, the Tribunal has awarded Rs.50,000/- to each of the claimants under the head love and affection, as per the judgments of the Hon'ble Apex Court in ***United India Insurance Co. Limited v. Satinder Kaur and Ors. [MANU/SC/0500/2020 : (2021) 11 SCC 780]*** and ***Magma General Insurance Co. Ltd., vs Nanu Ram [2018 ACJ 2018]***, the compensation awarded under loss of love and affection is comprehended in loss of consortium and therefore, the claimants are entitled to consortium of Rs.40,000/- each. The Tribunal has awarded Rs.25,000/- under the head Funeral Expenses, this Court is inclined to modify the same to Rs.15,000/-.

20. Accordingly, the award passed by the Tribunal under various heads are hereby modified as follows:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or reduced
1.	Loss of Income	10,53,000/-	5,06,666/-	Enhanced
2.	Loss of love and affection/ modified to loss of consortium	1,00,000/-	80,000/-	Reduced

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or reduced
3.	Funeral expenses	25,000/-	15,000/-	Reduced
	Total Compensation	11,78,000/-	**6,01,666/-**	**Reduced**

20. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.11,78,000/- is hereby reduced to **Rs.6,01,666/- [Rupees Six Lakh One Thousand and Six Hundred and Sixty Six only]** together along with interest at the rate of 7.5% per annum from the date of filing of Claim Petition till the date of deposit, excluding the default period, if any. The appellant - Insurance Company herein is directed to deposit the amount awarded by this Court along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P.No.35 of 2016 on the file of the Special Sub Judge, Motor Accidents Claims Tribunal, Tiruvannamalai. On such deposit, the claimants are permitted to withdraw the award amount now determined by this Court along with interest and costs, less the amount if any, already withdrawn, as per the apportionment fixed by the Tribunal. The Tribunal shall disburse the amount now awarded by this Court by directly

giving credit to the Savings Bank Account of the claimants. Since this Court has reduced the compensation, the insurance company is directed to deposit additional amount, if any or if excess amount already deposited, then the insurance company is given liberty to withdraw the same. Consequently, connected civil miscellaneous petition stands closed. There shall be no order as to costs in the present appeal.

25.09.2023

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Index:Yes/No
Speaking Order:Yes/No
Neutral Citation Case: Yes/No

To:

1. The Special Sub Judge,
   Motor Accident Claims Tribunal,
   Tiruvannamalai.

2. The Section Officer,
   V.R.Section,
   High Court, Chennai.

K. RAJASEKAR, J.
stn

C.M.A. No. 2270 of 2017

25.09.2023