



CMA(MD).No.432 of 2015

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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RESERVED ON : 13.03.2023

PRONOUNCED ON : 17.03.2023

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THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.432 of 2015
and M.P(MD).No.1 of 2015

The Branch Manager
Oriental Insurance Company Ltd.,
Tenkasi Road
Rajapalayam

... Appellant

vs.

1.Tmt.Suja

2.Minor Deepuraj

3.R.Sekar

...Respondents

(2nd respondent minor represented by
1st respondent)

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, to set aside the order of the Motor Accident Claims Tribunal Cum Chief Judicial Magistrate, Srivilliputhur made in MCOP.No.19 of 2012 dated 26.04.2014 and allow the appeal.



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For Appellant : Mr.C.Jawahar Ravindran

For R1 & R2 : Mr.K.K.Samy

For R3 : No appearance

J U D G M E N T

The appeal has been filed by the Insurance Company challenging an award passed by the Motor Accident Claims Tribunal primarily on the ground of liability.

2.When the deceased Selvaraj was driving a two wheeler, an unknown vehicle coming from the opposite direction which was driven in a rash and negligent manner, had hit against the two wheeler and it had not stopped but proceeded. The said Selvaraj suffered head injury and he passed away on 02.03.2012.

3.According to the claimants, the said Selvaraj was working as a salesman with the first respondent who is the owner of the vehicle. A sum of Rs.1,50,000/- has been spent toward medical expenses and the claimant made a claim of Rs.13,07,880/-.

4.The learned counsel for the second respondent/Insurance Company had filed a counter affidavit contending that the application under Section 163-A of Motor Vehicles Act is unsustainable when there



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is negligence on the part of the deceased Selvaraj. The Insurance Company had further contended that the said deceased Selvaraj did not have any driving license at the material point of time. They have further contended that the said Selvaraj was not an employee or workman under the first respondent. They have also disputed the quantum of compensation that was prayed for.

5.The Tribunal after considering the oral and documentary evidence, arrived at a finding that since the claim petition has been filed under Section 163 (A) of the Motor Vehicles Act, the issue of negligence on the part of the deceased need not be gone into. Thereafter, the Tribunal had proceeded to hold the the second respondent Insurance Company is liable to pay the compensation. The Tribunal has arrived at a finding that the claimants are entitled to a compensation of Rs.6,12,236/- after calculating the notional income of the deceased as Rs.40,000/- per month. This award is under challenge before this Court.

6.According to the learned counsel appearing for the appellant, the Insurance Company has taken a specific plea that the driver of the motor bike namely the deceased was responsible for the said accident due to his rash and negligent driving. Being a tortfeasor, he is not entitled to file an



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application under Section 163(A) of the Motor Vehicles Act. That apart, according to the claimants, an unknown vehicle had caused accident. Therefore, it should only be considered as a hit and run case and no compensation can be claimed from the appellant/Insurance Company.

7.The learned counsel had relied upon a judgement of the Hon'ble Supreme Court reported *in 2020 (1) TN MAC 1 (SC) (Ramkhiladi and another Vs. United India Insurance Co.Ltd.,)* to contend that the driver of the vehicle had borrowed vehicle from a third party and hence, he will be entering into the shoes of the owner. The owner of the vehicle will not be entitled to receive compensation under Section 163(A) of the Motor Vehicles Act.

8.Per contra, the learned counsel appearing for the respondents had relied upon a judgement of this Court reported in *2019 0 ACJ 1705 (IFFCO- TOKIO General Insurance Company Ltd., Vs. S.Ilangovan & Others)* and the judgement of the Hon'ble Supreme Court reported in *2013 8 MLJ 136 (United India Insurance Company Ltd., Vs. Sunil Kumar & another)* and the judgement of this Court *in C.M.A.No.3049 of 2018 dated 28.01.2019 (The Divisional Manager, Oriental Insurance Company Ltd., Vs. G.Annadurai and another)* to impress



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upon the Court that even in a case of hit and run, this Court can invoke Section 163 (A) of Motor Vehicles Act. The question of invoking the negligence on the part of the driver would not arise in cases of applications filed under Section 163(A) of the Motor Vehicles Act. Hence, he prayed for sustaining the order passed by the Tribunal.

9.I have considered the submissions made on either side and perused the materials available on record.

10.From the claim petition, it could be seen that the deceased was working as a salesman in M/s.Sri Modern Agency owned by the first respondent herein. The said fact has been disputed in the counter contending that the claimants have to prove the employment of the deceased Selvaraj to the first respondent. However, it is not the case of the Insurance Company that the deceased Selvaraj had borrowed the vehicle from the first respondent and had driven the same. Only if there is a pleading on the part of the Insurance Company that the deceased had borrowed the vehicle from the owner, the question of stepping into the shoes of the owner would arise. Therefore, this Court is of the considered opinion that the deceased Selvaraj cannot be considered to be a borrower of the vehicle from the first respondent owner of the vehicle. Hence, the



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judgement relied upon by the appellant Insurance Company is not applicable to the facts of the present case.

11.The learned counsel for the respondents had relied upon Three Judges Bench of the Hon'ble Supreme Court reported in ***AIR 2017 SC 5710*** (United India Insurance Co., Ltd., Vs. Sunil Kumar and another) to contend that the defence of negligence of the claimant is alien to a claim petition under Section 163(A) of the Motor Vehicles Act.

12.The learned counsel for the respondents had further relied upon a judgement of the Hon'ble Supreme Court reported ***in 2018(2) TN MAC 149 (SC) (Shivaji and another Vs. Divisional Manager, United India Insurance Co.,Ltd., and others)*** to contend that the insurer cannot raise any defence of negligence on the part of the victim to counter the plea of compensation.

13.A perusal of the counter filed by the Insurance Company will clearly indicate that the main defence taken by the company is that the deceased had driven the vehicle in a rash and negligent manner. Therefore, in view of the above said Supreme Court Judgments, the Insurance Company cannot be permitted to raise the said defence. The



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award passed by the Tribunal directing the Insurance Company to pay the award does not call for any interference.

14.As far as the quantum of compensation is concerned, the first claimant is the widow and the second claimant is the minor son. The Tribunal has taken Rs.40,000/- as notional income of the deceased and deducted 1/3rd towards personal expenses. The claimant has filed certain xerox copies of the bills for a sum of Rs.2,39,981/- towards medical expenses and the same was checked and the Tribunal has accepted only the original bills to a tune of about Rs.1,62,238/- and thereafter, arrived at a compensation of Rs.6,12,236/-. Considering the fact that the first claimant lost her husband aged about 25 years leaving behind 6 year old minor son, this Court does not find that the award is either unreasonable or exorbitant.

15.In view of the above said facts, this Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

17.03.2023

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To

- 1.The Motor Accident Claims Tribunal
Cum Chief Judicial Magistrate,
Srivilliputhur

- 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR,J.

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Pre-delivery Judgement made in
C.M.A(MD)No.432 of 2015
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