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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **13.03.2023**

CORAM

**THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR**

**C.M.A(MD)No.547 of 2015**

1.C.Mayil

2.Minor C.Sivakumar ... Appellants/Petitioners 1&2

*(2nd appellant is represented through his mother and next friend 1st appellant)*

Vs.

1.Manikandan

2.M/s.Universal Sompo General Insurance
Company Ltd.,
Through its Regional Manager,
Capital Towers, 5th Floor,
554-555, Anna Salai,
Teynampet,
Chennai-18. ... Respondents/Respondents

**PRAYER:** Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act 1988, against the order passed in M.C.O.P.No.439 of 2012 on the file of the 4th Additional District Court, Madurai dated 27.11.2014.

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For Appellants : Mr.M.P.Senthil

For R1 : Mr.A.Jeyaram

For R2 : No Appearance

**JUDGEMENT**

The present appeal has been filed by the claimants challenging the dismissal of the claim petition by the tribunal on the ground that the claimants have not established the negligence of the offending vehicle.

2. The claim petition has been filed under Section 163-A of the Motor Vehicle Act by the claimants alleging that the claimants are the mother and brother of the deceased, who was a bachelor at the time of accident. According to the claimants, the auto driven by the deceased Kumar dashed against another auto belonging to the 1st respondent in the claim petition. In the said accident, the son of the 1st claimant and brother of the 2nd claimant had passed away.

3. According to the claimants, the deceased was aged about 19 years and he was hale and healthy and he was taking care of his mother and brother in view of the fact that his father had pre-deceased.

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According to them, he was having a monthly income of Rs.3,300/- (Rupees Three Thousand Three Hundred only) per month and they have prayed for Rs.4,00,000/- (Rupees Four Lakh only) towards compensation.

4. The 2nd respondent in the said claim petition was the insurance company of the auto, which was driven by the deceased. The 1st respondent who is the owner of the offending auto had filed a counter contending that an F.I.R has been registered as against the deceased person in view of the fact that he was driving the vehicle in a rash and negligent manner. He had further contended that a sum of Rs.4,00,000/- (Rupees Seven Lakhs only) claimed as a compensation is highly excessive and exorbitant.

5. The tribunal after considering the oral and documentary evidence filed on either side arrived at a finding that except the oral evidence of P.W.1, there is no evidence for the proof of negligence of the driver of the 1st respondent. The tribunal has also raised doubts about the involvement of the other vehicle. The tribunal further found that there is absolutely lack of evidence to prove the involvement of the other auto in

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the accident by the 1st respondent and also the existence of negligence of its driver. The tribunal further found that they are not entitled to claim compensation even for no fault liability and dismissed the said claim. Challenging the said order, the present appeal has been filed by the claimants.

6. Though the 2nd respondent insurance company has been served, there is no representation either through their officials or through their counsel.

7. The learned counsel for the claimants/appellants brought to the notice of the Court that 2 of the passengers who had travelled in the auto which was driven by the deceased had filed M.C.O.P.No.450 of 2012 before II Additional Sub Court, Madurai. In the said claim petition, the tribunal was pleased to arrive at a finding that the driver of both the autos have contributed to the accident and apportioned 50% liability upon the deceased, namely Kumar and the balance 50% liability was apportioned on the part of the driver of the auto owned by the 1st respondent herein. Challenging the said award, the insurance company of the offending vehicle which was owned by Manikandan had filed C.M.A(MD)No.733

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of 2015 before this Court. This Court was pleased to confirm the apportionment of liability by an order, dated 31.10.2017. Therefore, according to the learned counsel appearing for the claimants/appellants, this Court has arrived at a finding that both the auto drivers were equally responsible for the said accident and apportioned the liability between them. The legal heirs of the driver of one of the autos have filed the present claim petition. Therefore, deducting the 50% of the liability of the deceased, the balance 50% ought to have been paid as compensation by the insurance company.

8. The learned counsel appearing for the appellants had further contended that the tribunal has not adverted to the fact that the claim petition has been filed under Section 163-A of the Motor Vehicles Act. The tribunal was under the erroneous impression that the claim petition has been filed under Section 166 of the Motor Vehicles Act. Based upon the erroneous understanding, the claim petition has been dismissed on the ground that the claimants have not established the negligence on the part of the vehicle owned by the 1st respondent in the claim petition. Therefore, the learned counsel appearing for the appellants had contended that when a claim petition is filed under Section 163-A, the

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claimants need not prove the negligence of the offending vehicle. Even if it is proved that the driver of the vehicle was responsible for the accident, they are entitled to get compensation under Section 163-A. In the present case, the owner of the auto that was driven by the deceased is one Narayanasamy and the auto is insured to the 2nd respondent insurance company, namely Universal Sompo General Insurance Company Limited. Therefore, the driver who deceased is a third party to the said accident and even assuming that he is one of the Joint tortfeasors, he is entitled to receive compensation, namely the 50% of the compensation after deducting his contributory negligence. Though the insurance company has been served, there is no appearance and this Court proceeds to consider the matter on merits based upon the submission made on the side of the claimants/appellants.

9. As rightly contended by the learned counsel appearing for the claimant/appellant, the claim petition has been filed under Section 163-A of the Motor Vehicle Act. Ignoring the said fact, the tribunal has proceeded to consider the said claim petition under Section 166 of the Motor Vehicle Act and has proceeded to dismiss the same on the ground that the claimants have not established the negligence on the part of the

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offending vehicle. Therefore, the dismissal of the claim petition by the tribunal is erroneous and it is liable to be set aside.

10. The claimants have contended that the deceased auto driver was earning a sum of Rs.3,300/- (Rupees Three Thousand and Three Hundred only) per month and totally a sum of Rs.39,600/- (Rupees Thirty Nine Thousand and Six Hundred only) per year squarely falling within the schedule as contemplated under Section 163 A of the Motor Vehicle Act. Therefore, the annual income of the deceased is Rs.39,600/- (Rupees Thirty Nine Thousand and Six Hundred only). After deducting 50% towards personal expenses, it would be Rs.19,800/- (Rupees Nineteen Thousand and Eight Hundred only). Therefore, the total loss of income taking 16 as the multiplier would be Rs.3,16,800/- (Rupees Three Lakh Sixteen Thousand and Eight Hundred only). Taking 50% for contributory negligence, it would come Rs.1,58,400/- (Rupees One Lakh Fifty Eight Thousand and Four Hundred only). Towards funeral expenses Rs.15,000/- (Rupees Fifteen Thousand only) and towards filial consortium Rs.20,000/- (Rupees Twenty Thousand only) could be awarded. Therefore, the claimants are entitled to receive compensation of Rs.1,58,400/- (loss of income) + Rs.15,000/- (funeral

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expenses) + Rs.20,000 ( filial consortium) i.e., Rs.1,93,400/- (Rupees One Lakh Ninety Three Thousand and Four Hundred only) from the 2nd respondent in the appeal, namely Universal Sompo General Insurance Company. This will carry interest at 7.5% from 20.11.2012 till the date of realization.

11. With the above said observation, this Civil Miscellaneous Appeal stands allowed to the extent as stated above. No costs.

**13.03.2023**

NCC : Yes / No
Index : Yes / No
Internet : Yes / No

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To

1.The Additional District Court IV,
Madurai.

2.The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

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**R.VIJAYAKUMAR ,J.**

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Order made in
C.M.A(MD)No.547 of 2015

13.03.2023

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