IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.02.2024

CORAM

THE HONOURABLE MRS. JUSTICE R. KALAIMATHI

C.M.A.No.1773 of 2020
and
M.C.O.P.No. 30 of 2015

The New India Assurance Co. Ltd.,
Divisional Office,
Sethu Krishna Trade Centre,
133/31-A, 2nd Floor, Trichy Main Road,
Raja Sabari Theatre,
Gugai, Salem - 636 006.

... Appellant

Vs.

1. N. Lakshmi
2. S.Kanagam

... Respondents

PRAYER: Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the decree and judgment passed in M.C.O.P.No. 30 of 2015 on 28.08.2019 on the file of the learned Motor Accident Claims Tribunal Subordinate Court Attur.

For Appellant : Mr. J.Chandran

For Respondents : No appearance

JUDGMENT

This Civil Miscellaneous Appeal has been filed by the Insurance Company questioning the liability fastened on it, in the judgment and decree passed in M.C.O.P.No. 30 of 2015 on 28.08.2019 on the file of the Motor Accident Claims Tribunal Subordinate Court, Attur.

2. The Claim petition was filed under Section 163(A) of Motor Vehicle Act r/w Rule 3 of TNMACT Rules, claiming compensation of Rs.20,00,000/- for the death of N.Kumar who died in the road traffic accident that occurred on 01.02.2013.

3. The Tribunal after evaluating the evidence has held that the first claimant alone is entitled for a compensation of Rs. 5,19,900/- with interest at a rate of 7.5% per annum from the date of filing of petition.

4.The learned Counsel Mr.J.Chandran appearing for the appellant vehemently contended that the deceased himself was tort-feaser; he was rider cum owner of two wheeler bearing registration No. TN-77-B-8309 and while driving his vehicle he met with an accident when a dog crossed the road. In order to avoid hitting the dog, he applied brake and due to the said impact, his vehicle hit on the electric pole and died due to the accident. He would further contend that no premium was paid for the owner cum driver. As the accident occurred due to the negligent driving of the deceased, who happened to be the owner of the motor cycle, the legal heirs cannot seek for compensation for the death of the owner.

5. On receipt of notice, the first and second respondent remained absent.

6. At trial, on the petitioners side, the first petitioner has examined herself as P.W.1 and an ocular witness Vijaya was examined as P.W.2. and Seven documents were marked. Copy of the Insurance policy is Ex.P7. On the respondent side, two witnesses have been examined and final report filed in Crime No. 13 of 2013 of Jambunathapuram Police Station is Ex.R1. Copy of the statement of one Vishwanathan recorded under Section 161 of Criminal Procedure Code is Ex.R2.

7. It is the evidence of ocular witness P.W.2 Vijaya that on 01.02.2013, while the son of first petitioner was riding his two wheeler bearing registration No. TN-77-B-8309 along Musiri-Thuraiyur main road to reach his residence at Kamakapalayam from Musiri, at K.Kothampatti Village in front of Tea shop of Viswanathan at about 4.00 A.M due to sudden crossing of the dog, he applied brake. Due to which he lost control of the vehicle and hit on the electric post. Due to the said impact, he sustained severe head injuries and succumbed to the injuries.

8. It is the evidence of R.W.2, Krishnamoorthy that the final report was filed as action dropped and the final report is Ex.R1. Law is settled that first information report is not substantive peace of evidence and it can at the best be used for corroboration and contradiction.

9. P.W.2 is an ocular witness. It is her candid evidence that due to the sudden crossing of the dog, deceased lost control and hit on the electric pole. Therefore, it has been made clear by the claimant side that the accident not occurred due to the negligent driving of the deceased. The claim petition has been filed under Section 163A of Motor Vehicle Act the said provision is extracted hereunder.

> "***163 – A. Special provisions as to payment of compensation on structured formula basis.*** *– (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 of the authorised 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.*
>
> ***Explanation****. – For the purposes of this*

sub-section, "permanent disability" shall have the same meaning and extent as in the Workmen's Compensation Act, 1923.

(2) In any claim for compensation under sub-section(1), the claimant shall not be required to plead or establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act or neglect or default of the owner of the vehicle or vehicles concerned or of any other person.

(3) The Central Government may, keeping in view the cost of living by notification in the Official Gazette, from time to time amend the Second Schedule."

10. This Section was introduced by the amending Act 54 of 1994, by which a new right is created in favour of the claims and right under Section 163A is akin to the right under Section 140 of the Motor Vehicle Act, 1988.

11. If claim application under this provision is filed, the claimant has to establish the income of the victim, the age of the victim and the impact of Motor Vehicle accident which is either fatal or has caused injury with the name of the owner and the insurer of motor vehicle. It is relevant

to note that the question of liability and extent thereof are not justiciable, when a claim application is filed under Section 163A of the Act.

12. It is useful to extract the observations made by the Hon'ble Supreme Court in ***United India Insurance Co. Ltd., Vs. Sunil Kumar*** and another, reported in ***2013(2)TN MAC 737 (SC)*** is as follows:-

> *"8. We are, therefore, of the view that liability to make compensation under Section 163-A is on the principle of no fault and, therefore, the question as to who is at fault is immaterial and foreign to an enquiry under Section 163-A. Section 163-A does not make any provision for apportionment of the liability. If the owner of the vehicle or the Insurance Company is permitted to prove contributory negligence or default or wrongful act on the part of the victim or claimant, naturally it would defeat the very object and purpose of Section 163-A of the Act. Legislature never wanted the Claimant to plead or establish negligence on the part of the owner or the driver. Once it is established that death or permanent disablement occurred during the course of the user of the vehicle and the vehicle is insured, the Insurance Company or the owner, as the case may be, shall be liable to pay the Compensation, which is a statutory obligation."*

13. A Larger bench of the Hon'ble Supreme Court took up the

reference in ***United India Insurance Co.Ltd. v. Sunil Kumar and another***, reported in ***2017(2) TN MAC 753 (SC)***. The full Bench of the Apex Court as observed as follows:-

> *"8. From the above discussion, it is clear that grant of Compensation under Section 163-A of the Act on the basis of the Structured Formula is in the nature of a Final Award and the adjudication thereunder is required to be made without any requirement of any proof of negligence of the Driver/Owner of the vehicle(s) involved in the accident. This is made explicit by Section 163-A(2). Though the aforesaid section of the Act does not specifically exclude a possible defense of the Insurer based on the negligence of the Claimant as contemplated by Section 140(4) to permit such defense to be introduced by the Insurer and/ or to* *understand the provisions of Section 163-A of the Act to be contemplating any such situation would go contrary to the very legislative object behind introduction of Section 163-A of the Act, namely, final Compensation within a limited time frame on the basis of the Structured Formula to overcome situations where the claims of Compensation on the basis of fault liability was taking permit the Insurer to raise the defence of negligence would be to bring a proceeding under Section 163-A of the Act at par with the proceeding under Section 166 of the Act,*

which would not only be self-contradictory but also defeat the very legislative intention.

14. The Apex Court Concluded that in a proceeding under Section 163A of the Act, it is not necessary for the claimant to prove about the negligence aspect. The Hon'ble Supreme Court had an occasion to deal with under Section 163-A of Motor Vehicle Act in ***Shivaji and another Vs.Divisional Manager, United India Insurance Co. Ltd***. and others, reported in ***2018(2) TN MAC 149 (SC).*** It is held as under:

"5. The issue which arises before us is no longer res integra and is covered by a recent judgment of the Three-Judges of this Court in United India Insurance Co. Ltd. v. Sunil Kumar and another, 2017 (2) TN MAC 753 (SC): AIR 2017 SC 5710, wherein it was held that to permit a defense of negligence of the claimant by the insurer and/or to understand Section 163-A of the Act as contemplating such a situation, would be inconsistent with the legislative object behind introduction of this Provision, which is "final compensation within a limited time frame on the basis of the structured Formula to overcome situations where the claims of Compensation on the basis of fault liability was taking an unduly long time". The court observed that if an insurer was permitted to raise a defense of negligence under Section 163-A of the Act, it would "bring a proceeding under Section 163-

A of the Act at par with the proceeding under Section 166 of the Act which would not only be self – contradictory but also defeat the very legislative intention".

Consequently, it was held that in a proceeding under Section 163-A of the Act, the insurer cannot raise any defense of negligence on the part of the victim to counter for Compensation."

15. In ***Deepal Girishbhai Soni and other v.United India Insurance Co. Ltd., Baroda***, reported in ***2004(1) TN MAC (SC) 193***, the full Bench of Apex Court has held that:-

"46. Section 163-A has an overriding effect and provides for special provisions as to payment of compensation on structured formula basis. Sub-Section (1) of Section 163-A contains a non-obstante clause, in terms whereof the owner of the motor vehicle or the authorized insurer is 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...."

16. Therefore as per section 163A of Motor Vehicle Act, the claimant shall not be required to plead or establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act or neglect or default of the owner of the vehicle or

vehicles concerned or of any other person.

17. It is pertinent to note that it appears that FIR was registered under Section 304A of Indian Penal code.

18. P.W.2 ocular witness has stated in clear terms that when the deceased was riding his two wheeler along the Musiri-Thuraiyur Main road at the point of K.Kothampatti Village in front of Tea shop of Viswanathan at about 4.00 A.M, due to sudden crossing of the dog, he applied sudden brake and he lost control of the vehicle which resulted in hit on the electric post. Due to the said impact, the deceased sustained severe head injuries and died. It has come on record, that the deceased died not due to his negligent act of driving. Therefore, the tribunal has discussed in detail about the provisions of law, the evidence available with regard to the manner of accident and came to the conclusion that the deceased died not due to his rash and negligent driving.

19. Ex.R7 is the copy of the insurance Policy of the two wheeler. On careful perusal of Ex.R7 policy, it appears that in the schedule of premium, under liability, column, premium was collected for personal accident cover for owner driver. The insurance policy is a package policy.

Insurer as a party to the contract of insurance is bound by the terms of contract of Insurance. Therefore, this Court is of the considered view that as death occurred not due to the rash and negligent driving of the owner of the two wheeler and his claim petition has been filed under Section 163A of Motor Vehicle Act, the arguments put forth by the learned counsel for the appellant are not sustainable in law.

20. In fine, this Civil Miscellaneous Appeal stands dismissed. Resultantly, the judgment and decree passed in M.C.O.P. No. 30 of 2015 dated 28.08.2019 on the file of the learned Motor Accident Claims Tribunal (Subordinate Court) Attur, stands confirmed. There is no order as to cost.

22.02.2024

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

To

1. Motor Accident Claims Tribunal, (Subordinate Court)
   Attur.

2. The Section Officer,
 VR Section, High Court, Madras.

R. KALAIMATHI. J

nsl

C.M.A.No.1773 of 2020

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