IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.07.2024

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A. No.1460 of 2021 and C.M.P. No.7620 of 2021

The New India Assurance Co. Ltd.,
Divisional Office, J.N.Street,
Pondicherry. .. Appellant

vs.

1.Parimala

2.Minor Anandaparthasarathy

3.Minor Rajeswari

4.Minor Bhuvaneshwari

5.Pappa

6.Kaliyan

(2 to 4 minor respondents rep. by next friend
Guardian 1st respondent mother)

7.Manojkumar

8.Future Generali India Insurance Co. Ltd.,
1st Floor, Basudha Tower, 1579-A,
15th Main Road, J Block,
Anna Nagar, Chennai - 600 040. .. Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor

Vehicles Act, 1988 against and judgment and decree dated 13.12.2019 made in M.C.O.P. No.160 of 2015 on the file of the Motor Accidents Claims Tribunal, (III Additional District Court), Villupuram at Kallakurichi.

For Appellant : Ms.G.Sukumari

For Respondents : Mr.K.Suriyanarayanan for R1 to R5

Mr.M.B.Raghavan for Mr.M.B.Gopalan Associates for R8

JUDGMENT

This appeal has been filed by the appellant/Insurance Company, questioning its liability to pay compensation.

2.According to the appellant/Insurance Company, they are not liable to pay compensation for the following reasons:

a)Even though the Claim Petition was filed under Section 163-A of the Motor Vehicles Act, 1988, the deceased himself being a Tortfeasor, who had insured the vehicle with the appellant/Insurance Company, the appellant/Insurance Company is not liable to pay compensation;

b)The vehicle, insured with the appellant/Insurance Company had dashed against the trailer, which has been insured with the eighth respondent and owned by the seventh respondent. Therefore, according to the appellant/Insurance Company, the eighth respondent/Insurance Company is alone responsible to pay compensation to the claimants under Section 163-A of the Motor Vehicles Act.

3.In support of her submission, the learned counsel for the appellant/Insurance Company drew the attention of this Court to the following authorities, namely,

a)Poovalagan and another vs. S.Malik Hussain and another reported in 2022 (2) TN MAC 316 (DB);

b)Iffco Tokio General Insurance Co. Ltd. vs. K.Pazhanivel and others reported in 2023 (1) TN MAC 73 (DB).

4.The position of law, relied upon by the learned counsel for the appellant/Insurance Company, is not disputed by the learned counsel appearing for the eighth respondent/Insurance company. Therefore, only the eighth respondent/Insurance Company is liable to pay compensation under Section 163-A of the Motor Vehicles Act and not the appellant/ Insurance Company.

5.The Tribunal, under the impugned award, has determined the compensation as per Section 166 of the Motor Vehicles Act and has not followed the structured formula basis for the purpose of determining compensation under Section 163-A of the Motor Vehicles Act. If the structured formula is followed, the eighth respondent/Insurance company is liable to pay compensation to the claimants as detailed hereunder:

Annual income	- Rs.40,000/- p.a.
Age of the deceased	- 32 years
Multiplier	- 16 as per second schedule
Loss of dependency	- Rs.4,26,667 (40,000 x 2/3 x 16)
Funeral expenses	- Rs. 2,000
Loss of consortium	- Rs. 5,000
Loss of estate	- Rs. 2,500
Total	Rs.4,36,167

6.The amount of compensation payable to the claimants, as determined supra, has also not been disputed by the learned counsel for the eighth respondent/Insurance Company.

7.For the foregoing reasons, this Court reverses the finding of the

Tribunal by holding that the appellant/Insurance Company is not liable to pay compensation, as determined by the Tribunal under the impugned award and it is only the eighth respondent/Insurance Company is alone liable to pay compensation, amounting to Rs.4,36,167/- as detailed supra.

8.Accordingly, this appeal will have to be allowed by setting aside the findings of the Tribunal under the impugned award that the appellant/ Insurance Company is liable to pay compensation.

9.This Court therefore reverses the findings of the Tribunal by holding that the eighth respondent/Insurance Company alone is liable to pay compensation, amounting to Rs.4,36,167/- to the claimants as detailed supra, instead of Rs.7,50,000/- awarded by the Tribunal under the impugned award, which was awarded as per the provisions of Section 166 of the Motor Vehicles Act, whereas the Tribunal ought to have determined the compensation only under Section 163-A of the Motor Vehicles Act.

10.In the result, this appeal is allowed by exonerating the liability of the appellant/Insurance Company, but instead directing the eighth respondent/Insurance company to deposit Rs.4,36,167/- together with interest at the rate of 7.5% per annum from the date of the claim petition till the date of deposit to the credit of M.C.O.P. No.160 of 2015 on the file of the Motor Accidents Claims Tribunal, III Additional District Court, Villupuram, within a period of four weeks from the date of receipt of a copy of this judgment.

11.Since this appeal is allowed, the appellant/Insurance company is permitted to withdraw the amount deposited by them, which is now lying to the credit of the M.C.O.P. No.160 of 2015 by filing an appropriate application and the Tribunal shall order for payment out of the said money to the appellant/Insurance Company.

12.The claimants are permitted to withdraw the said amount as apportioned by the Tribunal, once it is deposited by the eighth respondent/Insurance Company, by filing an appropriate application. On such an application being made, the Tribunal shall transfer the amount lying to the credit of M.C.O.P. No.160 of 2015 on the file of the Motor Accidents Claims Tribunal, III Additional District Court, Villupuram at Kallakurichi to the bank account of the claimants directly through RTGS, within a period of one week thereafter. No costs. Consequently, connected C.M.P. is closed.

24.07.2024

vga

To

1.The Motor Accidents Claims Tribunal,
Special Sub Judge, Coimbatore.

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

ABDUL QUDDHOSE, J.

vga

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