



CMA No.1827 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.04.2024

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

CMA No.1837 of 2022

The oriental Insurance Co.Ltd.,
No.30/6, Theenplaza, 1st Floor
State Bank Road
Mayiladuthurai Town & Taluk.

.. Appellant

.Vs.

1.Ananthi

2.Padmanabhan

3.Jamuna

4.Ramu (died)

5.Ravi

.. Respondents

[R4 died.

Respondents 1 to 3 (who are already on record) and
R5 is brought on record as LR of the deceased R-4 viz., Ramu
vide Court Order dated 8.12.2023 made in CMP No.22043/2023
in CMA No.1837/2022 by KRJ]

Prayer : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, to set aside the judgment and decree in M.C.O.P.No.89 of 2018 dated 8.4.2022, on the file of the Motor Accidents Claims Tribunal (Principal Subordinate Judge) at Mayiladuthurai.



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For Appellant : Mr.M.Krishnamoorthy

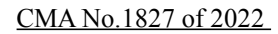
For Respondents : Mr.T.Gobinath [R1 to R3]

JUDGMENT

The present appeal has been instituted by the Insurance Company against the award passed by the (Principal Subordinate Judge) Motor Accident Claims Tribunal, Mayiladuthurai in MCOP.No.89 of 2018, dated 8.4.2022.

2.The deceased was riding a two wheeler on 28.2.2017 at about 10.30 pm and was coming to the house after completing his work. When the vehicle approached Theepanthamman Temple, a dog all of a sudden crossed the road and as a result, the deceased lost his balance and fell down from the two wheeler and he sustained grievous injuries. Unfortunately, he succumbed to the injuries. An FIR came to be registered in Crime No.167 of 2017. It is under these circumstances, the claimants who are the wife, parents and son of the claimants preferred the claim petition for compensation under Section 163A of the Motor Vehicles Act, 1988 (herein after referred as 'the Act')

3.The Tribunal came to a conclusion that the aspect of negligence is irrelevant while dealing with a claim petition filed under Section 163A of the Act. The Tribunal came to a conclusion that since the dog had suddenly crossed the road, the



7.The Tribunal has conveniently disregarded Ex.R.1 to Ex.R.3 and has straightaway concluded that the accident had taken place since the dog crossed the road. These three documents are very vital to the facts of the present case.



8.Ex.R.1 is the report that was prepared by the Insurance Company after the claim was made by the claimants. On carefully going through the report, it is seen that the deceased was under the influence of alcohol and he has driven the vehicle without any control and as a result, the vehicle had dashed an an electric post. It is clear from Ex.R.2 which is the report of the Forensic Science Department that the blood of the deceased was detected with 412 mg percentage of ethyl alcohol. The first claimant who is the wife of the deceased was informed through Ex.R.3 that the claim made by her for compensation cannot be entertained since the deceased was under the influence of alcohol at the time of the accident. Accordingly, the claim was repudiated.

9.Apart from the above, the claim petition shows that the monthly income of the deceased was Rs.15,000/-. In order to make a claim for compensation under Section 163A, the annual income of the concerned person must be Rs.40,000/- or less. In this case, the monthly income itself is claimed to be Rs.15,000/-. This is yet another ground of which the award passed by the Tribunal has been questioned.

10.On carefully going through the materials, it is very clear that the deceased who was driving the two wheeler is the tortfeasor in this case. He had a high percentage of alcohol in his blood and as a result, he was not within control and he had dashed the two wheeler in an electric post. In view of the same, the claimants who are claiming under the tortfeasor will not be entitled to claim for any



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compensation under Section 163A of the Act. That apart, in terms of the judgment of the Apex Court in **Deepal Girishbhai Soni and Others v. United India Insurance Co.Ltd.,** reported in **2004 1 ACJ 934**, the monthly income of the deceased is Rs.15,000/- and whereas the compensation can be paid under Section 163A only for persons whose annual income is Rs.40,000/- or less. On this ground also, the claim made by the claimants for compensation under Section 163A is unsustainable.

11.In the light of the above discussion, the award passed by the Motor Accidents Claims Tribunal (Principal Subordinate Judge) Mayiladuthurai in M.C.O.P.No.89 of 2018, dated 8.4.2022, is hereby set aside and this civil miscellaneous appeal stands allowed. If the appellant Insurance Company has deposited any amount, it will be left open to the appellant Insurance Company to withdraw the same with accrued interest. No costs.

08.04.2024

Index : Yes/No
Speaking Order/Non-Speaking Order
Neutral citation : Yes/No
KP

To

Motor Accidents Claims Tribunal
(Principal Subordinate Judge)
Mayiladuthurai.



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N. ANAND VENKATESH., J

KP

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