IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.07.2024

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A. No.2948 of 2022

1.Nagammal

2.Thangavel .. Appellants

Vs.

1.C.Vetrivel

2.The New India Assurance Company Ltd.,
39-C, Bye-Pass Road,
Dharmapuri Town,
Dharmapuri.

3.G.Karthik

4.National Insurance Company Ltd.,
Namakkal Town,
Namakkal Taluk,
Namakkal District. .. Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and judgment dated 27.03.2018 made in M.C.O.P. No.292 of 2015 on the file of the Motor Accidents Claims Tribunal, Principal District Court, Dharmapuri.

For Appellants : Mr.M.Sivakumar

For R1 & R3 : No appearance
For R2 : Ms.R.Sreevidhya
For R4 : Ms.N.B.Surekha

JUDGMENT

This appeal has been filed by the appellants/claimants, aggrieved by the dismissal of their claim petition by the Tribunal.

2.According to them, the Tribunal ought to have entertained their claim and awarded compensation since the claim was filed under Section 163A of the Motor Vehicles Act (no fault liability).

3.Admittedly, in the case on hand, the deceased was a Tort Feasor. The appellants/claimants are the dependants of the deceased. Admittedly, the claim was filed by the appellants/claimants only under Section 163A of the Motor Vehicles Act, in which claim is made on no fault liability basis. As per Section 163A of the Motor Vehicles Act, despite the fact that the deceased himself is a Tort Feasor, the appellants/claimants, who are his dependants, are entitled to seek compensation, based on structured formula basis as provided under the Motor Vehicles Act.

However, erroneously, the Tribunal, under the impugned award, by non-application of mind to the fact that the claim was filed by the appellants/ claimants only under Section 163A of the Motor Vehicles Act, has dismissed the claim by treating the claim to be one filed under Section 166 of the Motor Vehicles Act, where negligence needs to be proved.

4.It is a settled position of law that a claimant need not prove negligence insofar as the claim made under Section 163A of the Motor Vehicles Act is concerned.

5.For the foregoing reasons, this Court is of the considered view that by a perverse finding, the claim filed by the appellants/claimants, has been dismissed by the Tribunal and it has to be set aside by this Court.

6.Being a fatal accident claim, as per the structured formula basis, provided under Section 163A of the Motor Vehicles Act, this Court determines the compensation of Rs.3,60,900/-, which is due and payable to the appellants/claimants by the fourth respondent/Insurance Company as detailed hereunder:

S.No.	Head	Amount awarded by this Court
1.	Loss of income (3300x12x18x1/2)	Rs.3,56,400.00
2.	Funeral expenses	Rs. 2,000.00
3.	Loss of estate	Rs. 2,500.00
	Total	Rs.3,60,900.00

7.Though the learned counsel for the fourth respondent/Insurance Company would reiterate that the Tribunal has rightly dismissed the claim, this Court, in view of the settled position of law, as observed supra, is of the considered view that the Tribunal has committed an error by dismissing the claim despite the fact that the claim was filed by the appellants/claimants only under Section 163A of the Motor Vehicles Act, where there is no requirement to prove negligence and it was not a claim filed under Section 166 of the Motor Vehicles Act.

8.In the result, the impugned order of the Tribunal is hereby set aside by partly allowing the claim filed by the appellants/claimants in M.C.O.P. No.292 of 2015 by directing the fourth respondent/Insurance Company to pay the appellants/claimants a compensation of Rs.3,60,900/-

9.Accordingly, this Civil Miscellaneous Appeal is partly allowed. The fourth respondent/insurance company is directed to pay the appellants/claimants a compensation of Rs.3,60,900/-, after deducting the amount already deposited, if any, together with interest at the rate of 7.5% per annum from the date of the claim petition till the date of payment to the credit of M.C.O.P. No.292 of 2015 on the file of the Motor Accidents Claims Tribunal, Principal District Court, Dharmapuri within a period of four weeks from the date of receipt of a copy of this judgment.

10.It is made clear that the fourth respondent/Insurance Company is not liable to pay interest for 708 days for the delay period on the part of the appellants/claimants in preferring this appeal.

11.The appellants/claimants are permitted to withdraw the said amount, once it is deposited by the fourth respondent/Insurance

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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.292 of 2015 to the bank account of the appellants/ claimants directly through RTGS, within a period of one week thereafter. No costs.

10.07.2024

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To

1.The Motor Accidents Claims Tribunal,
Principal District Court, Dharmapuri.

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

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