IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 26.09.2023
PRONOUNCED ON : 22.03.2024

CORAM:

THE HONOURABLE MR. JUSTICE **P.VELMURUGAN**

C.M.A.No.509 of 2020

1. S.Chitra
2. Minor Reka
3. Minor Aravind ...Appellants

(minors 2 and 3 represented by guardian mother S.Chitra)

Vs.

1. S.Palanivel

2. Sri Ram General Insurance Co. Ltd.,
   rep. by General Manager,
   10003-E, 8th Riico Industrial Area,
   Sita Pura Jaipur, Rajasthan 302 022.

3. The New India Assurance Com.Ltd.,
   rep. by its Branch Manager
   No.12, New Hospital Road,
   Gobi, 636 452. ...Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, challenging the fair and decreetal order dated 01.12.2014 made in M.C.O.P.No.142 of 2011 by the learned Motor Accident Claims Tribunal, Principal District Judge, Krishnagiri.

For Appellants : Mr.B.Bharath Kumar
for Mr.V.Nicholas

For Respondents : Mr.J.Chandran for R3
Mr.K.Poomalai for R2
No appearance - R1

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JUDGMENT

This appeal is filed by the claimants seeking enhancement of compensation awarded in M.C.O.P.No.142 of 2011 dated 01.12.2014 by the learned Motor Accident Claims Tribunal, Principal District Judge, Krishnagiri.

2 The appellants/claimants filed claim petition before the Tribunal seeking Rs.20,00,000/- for the death of one Seenivasan, who is the husband of first appellant and father of appellants 2 and 3 stating that while the deceased was travelling in a vehicle Eicher Canter bearing Reg.No.TN 76 A 8620 loaded with liquor, at about 4.30 a.m. at Chennai – Krishnagiri National Highways, near Devaraj Kalyana Mandapam, a Lorry bearing Reg.No.TN 23 E 1224 was standing without any indication or signal and hence driver of the Eicher dashed against the stationary Lorry, due to which, the deceased, who was travelling in the Eicher died and the driver of the Lorry also died and hence case was registered against the driver of the Eicher.

3 The claim petition was contested by the second and third respondents/Insurance Companies and they filed detailed counter apart from disputing the manner of accident and liability. The first respondent, who is the owner of the offending vehicle did not appear before the Tribunal and he remained ex-parte.

4 To prove the claim, the appellants/claimants examined P.Ws.1 & 2 and marked Exs.P1 to 6. On the side of the respondents 2 & 3/Insurance Companies R.Ws.1 & 2 were examined and Ex.R1 was marked.

5 The Tribunal on an assessment of entire oral and documentary evidence, made a finding that the claimants are not entitled to get compensation under Section 163(A) of the Motor Vehicles Act, since the income of the deceased was more than Rs.40,000/- per annum and however, awarded Rs.50,000/- lump sum and directed the insurance companies of both the vehicles each to pay half of the award. Aggrieved over the findings of the Tribunal and compensation awarded, the claimants, who are the legal heirs of the deceased are before this Court.

6 Learned counsel for the appellants/claimants would submit that even though the claimants have filed claim petition under Section 163A of the Motor Vehicles Act, 1988, (in short 'MV Act') inadvertently, the Tribunal should have considered the claim of the appellants under Section

166 of the MV Act and awarded compensation accordingly. It is only a mistake committed on the part of counsel, who filed the claim petition under Section 163A of the MV Act, instead of 166 of the MV Act, for which the parties should not be penalised.

6.1 Learned counsel would further submit that the accident was due to the negligence of the Driver of the Lorry, who parked the vehicle on the road, without even any indication or signal. Therefore the insurance company of the said offending vehicle is liable to pay the compensation to the appellants/claimants. Even though the Tribunal accepted the fact that there is no proof to show that the Lorry was parked with necessary signal, but, erroneously came to the conclusion that the claimants are not entitled to get compensation under Section 163A. But, the Tribunal ought to have fixed atleast contributory negligence and should have awarded fair compensation under Section 166 of the MV Act considering the loss caused to family of the deceased.

6.2 Therefore in all angle the findings of the Tribunal that the claim petition under Section 163A is not maintainable and the award of the Tribunal granting lump sum of Rs.50,000/- as compensation is liable to be set aside.

7 Per contra, learned counsel for the second respondent, who is the insurer of the offending vehicle Lorry, would submit that the accident had occurred only due to the rash and negligent driving of the driver of the Eicher only, in which the deceased travelled at the time of accident. The Lorry, which was insured with this respondent, was parked on the left side with all indications, but without noticing the same the driver of the Eicher Canter driven the vehicle in a rash and negligent manner and dashed against the Lorry and caused the accident, due to which the driver of the Lorry also died. Ex.P1 FIR also registered against the driver of the Eicher only stating that due to rash and negligence of the driver of the Eicher the accident had occurred. Ex.P3 is motor vehicle inspection report, which clearly proves the fact that the Lorry was parked in the left side of the road and the Eicher, which came in a rash and negligent manner dashed against the Lorry and got damaged in the front portion.

7.1 Further the claimants are not entitled to get compensation under Section 163A and hence the Tribunal, on a proper appreciation of evidence, awarded lump sum of Rs.50,000/- and hence there is no reason to interfere with the same and the appeal is liable to be dismissed.

8 Learned counsel appearing for the third respondent, who is the insurer of the Eicher Canter bearing Reg.No.TN 23 E 1224, in which the deceased travelled at the time of accident, would submit that the deceased is the owner of the Eicher and he is not a third party and the policy does not cover the owner of the vehicle. Insurance company is only for the purpose of indemnifying the insured against liabilities towards third party and hence the third respondent is not liable to pay any compensation to the claimants. Further there was also dues in the premium of the insurance policy and hence the third respondent cannot pay any compensation to the claimants.

9 Heard the learned counsel for appellants, learned counsel for the second respondent and the learned counsel for the third respondent and also perused the materials available on record.

10 The accident is not in dispute and the fact that both the deceased who travelled in the Eicher and the driver of the Lorry offending vehicle died in the accident is also not in dispute. The Tribunal also made a finding that both the driver of the Eicher and the driver of the Lorry are responsible for the accident. If the driver of the Eicher was careful and cautious, he could have avoided the accident and on the other side atleast if the driver of the Lorry noticed the vehicle coming behind and applied some indications, he could have avoided the accident. Therefore as rightly pointed out by the Tribunal drivers of both the vehicles contributed to the accident.

11 Coming to the question as to whether the Tribunal is right in holding that the claimants are not entitled to get compensation under Section 163A of the MV Act, even though the claimants filed the claim petition under Section 163A of the MV Act, when the Tribunal finds that there was accident and the deceased died due to the accident and both the drivers of the vehicle contributed to the accident, it ought to have considered the claim petition under Section 166 of the MV Act, considering the facts of the case and this is only beneficiary legislature. The Tribunal held that monthly salary of the deceased as claimed by the claimants was Rs.20,000/- p.m. which comes Rs.2,40,000/- per annum and hence the claimants are not entitled to compensation under Section 163A, since the annual income of the deceased goes beyond Rs.40,000/-, which is the limit to claim compensation under Section 163A and therefore the Tribunal rejected the claim of the appellants but however awarded lump sum of Rs.50,000/- as compensation and directed both the insurance companies each to bear 50% of the award.

12 If at all the, it is claimed by the claimants that the income of the deceased as more than Rs.40,000/-, the Tribunal either should have restricted the income of the deceased and awarded compensation under Section 163A of the MV Act or otherwise, could have considered the claim petition under Section 166 of the MV Act and awarded compensation, since the claimants are the legal heirs of the deceased and they are illiterate and it is the counsel who filed the claim petition under Section 163A of the MV Act and hence for the mistake committed by the counsel, the party should not be penalised. Therefore this Court finds that since the accident had occurred due to the negligence on the part of drivers of both the vehicles, in which the deceased died, the claimants, who are the legal heirs of the deceased are entitled to get compensation.

13 It is the contention of the learned counsel for the third respondent, who is the insurer of the Eicher, in which the deceased travelled, that since the deceased was owner of the vehicle namely Eicher Canter, policy does not cover the owner and no premium was paid for the owner of the vehicle. Further there was premium dues for the policy and hence the insurer of the Eicher is not liable to pay any compensation. Admittedly the third respondent is the insurer and the deceased was the owner of the Eicher Canter. Further materials shows that the policy does not cover the owner and further there was also dues pending for premium of the policy. Hence this Court accepted the contention of the learned counsel for the third respondent and he is exonerated from the liability.

14 The main contention of the learned counsel for the second respondent, who is the insurer of the Lorry is that the accident had occurred only due to the rash and negligence of the driver of the Eicher, in which the deceased travelled at the time of accident and FIR also registered against him and hence this respondent is not liable to pay compensation to the claimants. A careful perusal of the records shows that there is no evidence to show that due to the rash and negligence of the driver of the Eicher only the accident had occurred and in the same way there is no evidence to show that the driver of the Lorry parked the vehicle with all indications and signals. Therefore on a proper appreciation of evidence, the tribunal made a finding that both the drivers of the vehicles contributed to the accident. Therefore this Court also fixes contributory negligence on both the vehicles and since the policy does not cover the owner, who died in the accident, the second respondent, who is the insurance company of the Lorry is liable to pay 50% of the compensation.

15 As discussed in the earlier paragraphs, this Court is inclined to grant compensation to the claimants under Section 166 of the MV Act and the second respondent is liable to pay 50% of the compensation.

16 It is claimed that the deceased was earning Rs.20,000/- p.m., but there was no document to prove the same. However, the deceased being a owner of the Eicher Canter, could have earned minimum Rs.10,000/- p.m. and since there are three dependents 1/3rd shall be deducted towards personal expenses of the deceased and the age of the deceased was 35 years and the correct multiplier would be 16 and hence loss of dependency is calculated hereunder:

Rs.10,000/- x 12 = Rs.1,20,000/-

Rs.1,20,000 – Rs.40,000/- (1/3rd deduction) = Rs.80,000/-

Hence the annual income of the deceased comes to Rs.80,000/-.

Loss of Dependency comes to Rs.80,000/- x 16 = Rs.12,80,000/-

Sl.No	*Various Heads*	*Award of this Court Rs.*
1.	Loss of Dependency	12,80,000/-
2.	Loss of Consortium to wife first claimant	40,000/-
3.	Loss of Love and Affection to minor children (each Rs.50,000/-)	1,00,000/-
4.	Transportation	10,000/-
5.	Funeral expenses	10,000/-
TOTAL COMPENSATION		**14,40,000/-**

17 As discussed earlier, this Court fixed the contributory negligence and hence the appellants/claimants are therefore entitled to 50% of the above compensation of Rs.14,40,000/-, which comes to Rs.7,20,000/- along with 7.5% interest from the date of claim petition till the date of realisation. The second respondent/Insurance Company is directed to deposit Rs.7,20,000/- along with 7.5% interest, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this order before the Tribunal. The first appellant/wife is entitled to Rs.4,00,000/-, 2nd and 3rd claimants are entitled to Rs.1,60,000/- each On such deposit being made, the Tribunal is directed to pay the same directly to the accounts of all the claimants, as per the decision of the Division Bench of this Court reported in *2016 (2) LW 561 (The Divisional Manager, The Oriental Insurance Company Limited, Kannur, Vs. Rajesh and Others)* since the minor claimants by this time would have attained majority,

18 With the above observations, modifications and directions, this civil miscellaneous appeal is disposed of. Connected miscellaneous petitions is also closed. No costs.

22.03.2024

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Speaking Order: Yes/No
Neutral citation: Yes/No

To

1. The Motor Accidents Claims Tribunal,
   Special Subordinate Court, Dharmapuri.

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

P.VELMURUGAN. J.,

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Pre-Delivery Judgment in

C.M.A.No.509 of 2020

22.03.2024