BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 27.11.2023

PRONOUNCED ON : 05.01.2024

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

C.M.A.(MD)No.417 of 2018
and
C.M.P.(MD)No.5282 of 2018

The United India Insurance Company Ltd.,
1170, Mettur Road, 2nd Floor,
Muthaiah Complex, Erode District.
Branch Office: Divisional Manager,
Divisional Office,
The United India Insurance Company Unit – I,
Promenade Road, Cantonment,
Tiruchy. ... Appellant

Vs.

1.Ramathilakam

2.Minor Mahamuni @ Devaraj
(2nd Minor Respondent is represented by
his mother and next friend,
the first respondent/Ramathilakam)

3.Muthusamy

4.Periyakkal

5.Muthukumar ... Respondents

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the judgment and decree of the Claims Tribunal in M.C.O.P.No.4422 of 2013 dated 24.06.2017 on the file of the Motor Accident Claims Tribunal, Special District Court (MCOP), Tiruchirappalli.

For Appellant	: Mr.J.S.Murali
For R1 to R4	: Mr.N.Sudhakar Nagaraj
For R5	: No Appearance

JUDGMENT

This Civil Miscellaneous Appeal has been directed as against the judgment and award passed by the learned Motor Accident Claims Tribunal, Special District Judge, at Tiruchirappalli in M.C.O.P.No.4422 of 2013 dated 24.06.2017, by the appellant/second respondent/insurance company, challenging the award passed by the learned Tribunal.

2.For the sake of convenience, the parties are addressed herein as per the rank in M.C.O.P.No.4422 of 2013.

3.The factual matrix of the present case, briefly stated, are as under:-

The first petitioner is the wife, the second petitioner is the minor son and the third and fourth petitioners are the parents of the deceased. On 22.03.2006 at about 05.00 p.m., the deceased Murugesh @ Murugesan employed under the first respondent on his instructions, took the two wheeler bearing registration No.TN-33-K-0678 belonging to the first respondent and went for money collection along Erode - Karur Byepass road from north south direction and when he came near Kollakattumedu P & C Pipe company, a dog suddenly crossed the road. As the result of which, the deceased lost balance and fell down. Immediately he was taken to Erode Government Hospital for first aid and thereafter, shifted to Government Headquarters Hospital, Trichy wherein he was admitted as inpatient from 22.03.2006 to 24.03.2006. However, he died on 24.03.2006. At the time of accident, the deceased Murugesh @ Murugesan was 30 years old. The petitioners filed claim petition in M.C.O.P.No.4422 of 2013 seeking compensation of Rs.10,00,000/-.

4.The first respondent is the owner of the vehicle. The second respondent is the insurance company for which the first respondent vehicle was insured. The second respondent has filed a counter refuting the allegation put forth in the claim petition. It was further contended that the deceased who was riding the motor cycle, had no valid driving licence to drive the motor cycle at the time of the accident and he dashed against the road side tamarind tree on his own volition and hence, it is not necessary to extend the insurance cover for the rider of two wheeler as per Section 147 of the Motor Vehicles Act.

5.The learned Tribunal framed two issues. Three witnesses were examined P.W.1 to P.W.3 and Ex.P1 to Ex.P3 were examined on the side of the petitioners. Two witnesses were examined as R.W.1 and R.W.2 and Ex.R1 on the side of the respondents and Ex.X1 were marked. The first respondent was set exparte before the learned Tribunal. On the basis of the evidence deposed by the witnesses and documents available on record and on the basis of the arguments submitted by the petitioners and the second respondent, the learned Tribunal came to a conclusion that the negligence of the deceased was not proved and the second respondent/insurance company was made liable. Hence, the learned Tribunal held that both the respondents 1 and 2 are liable to pay compensation. Since the avocation of the deceased was not proved, a notional monthly income of the deceased was fixed as Rs.4,000/-. After deducting 1/3 towards personal expenses, a notional income of Rs. 2,667/- was arrived at. Considering the age of the deceased to be 30 years, the multiplier '17' was adopted. The loss of dependency was arrived at Rs.5,44,068/- (2667x12x17). The quantum of award is decided by the learned Tribunal is as follows:-

Head	**Compensation awarded**
(i)Loss of dependency:	Rs.5,44,068/-
(ii)Funeral expenses and transportation expenses:	Rs.15,000/-
(iii)Love and affection:	Rs.1,00,000/-
(iv)Consortium:	Rs.1,00,000/-
Total compensation awarded:	Rs.7,59,068/- with interest @ 7.5 % from the date of the claim until the realization and costs.

6.Challenging the same, the second respondent insurance company had filed this Civil Miscellaneous Appeal.

7.In the instant case, only vehicle involved in the accident is the two wheeler bearing registration No.TN-33-K-0678 driven by the deceased. However, the cause of the accident is due to the sudden crossing of the dog. As the result of which, the deceased dashed against the Tamarind tree and sustained grievous injuries and after treatment, passed away.

8.The learned counsel appearing for the appellant vehemently submitted that the deceased himself being a tort feasor, the dependants are not entitled for compensation.

9.The pertinent question to be decided is whether the legal heirs of the deceased are entitled for compensation. The learned counsel appearing for the appellant vehemently relying upon the case of ***Divisional Manager v. Nagarathinam and others*** reported in ***2021 (2) TNMAC 314***, submitted that the deceased was driving the vehicle belonging to the first respondent. While riding in order to avoid hitting a dog which crossed the road unexpectedly, he hit against the tamarind tree and fell down and sustained grievous injuries. As the result of which, he died after taking treatment for a couple of days. The deceased driving a borrowed vehicle and he himself being a tort feasor, the claim petition under Section 163A is not maintainable and the insurer is not liable to pay compensation to the petitioners. The relevant portion of the judgment is extracted as follows:-

> "*16.From the materials on record, it is seen that it is the contention of the respondents 1 to 6 that the deceased was employed by the 8 th respondent as driver in harvesting tractor. On the date of accident, the deceased parked the harvesting tractor, travelled in the motorcycle belonging to the 7 th respondent to find out the paddy field and after locating the paddy field, while returning, the deceased in order to avoid hitting the pedestrian, who suddenly tried to cross the road, dashed on the back side of the bullock cart. It is the contention of the respondents 1 to 6 that the accident did not occur due to negligence of the deceased, but only due to the pedestrian who suddenly crossed the road. To substantiate this contention, the respondents 1 to 6 examined the 1 st respondent as P.W.1 and an eye-witness to the accident as P.W.2. P.W.2 deposed as claimed by the respondents 1 to 6. On the other hand, it is the contention of the appellant that the accident has occurred only due to negligence on the part of the deceased and the appellant is not liable to pay any compensation even when the claim petition is filed under Section 163-A of the Act. The*

Tribunal considering the evidence of P.W.2 held that the accident did not occur due to negligence on the part of the deceased and directed the appellant and the 7 th respondent being insurer and owner of the motorcycle, to pay the compensation. The Tribunal has committed an error in holding that it cannot be termed that the accident occurred due to negligence of the deceased. The Tribunal failed to consider that the F.I.R. is registered against the deceased and charge sheet was laid against the deceased. The final report was filed stating that the charges against the deceased were abated due to the death of the rider of the motorcycle in the accident. It is pertinent to note that no other vehicle is involved in the accident. Even when a pedestrian tried to cross the road suddenly, had the deceased was riding the motorcycle cautiously, he could have avoided the accident by hitting on the bullock cart. From the above materials, it is clear that the accident has occurred only due to negligence on the part of the deceased.

17.The respondents 1 to 6 filed the claim petition under Section 163-A of the Motor Vehicles Act claiming compensation for the death of one Annamalai, who died in the accident that took place on 11.03.2007.

18.The issues to be decided in the present appeal are:

(i) Whether the claim petition filed by the respondents 1 to 6 under Section 163-A of the Act is maintainable against the

Insurance Company of the Motorcycle when the deceased who borrowed the vehicle was responsible for the accident and when he was the tort-feasor?

(ii) Whether the respondents 1 to 6 are entitled to compensation under Employees Compensation Act on the notional theory of extension of employment and whether the 9 th respondent is liable to pay compensation to the respondents 1 to 6 as insurer of harvesting tractor.

20.As per this Section, the owner and insurer are liable to pay compensation as per II Schedule of the Act. As per Section 163-A (2) of the Act, the claimant is not required to plead and establish any wrongful act or negligence or default of the owner of the vehicle or vehicle concerned or any other person. The issue whether the owner and driver of the vehicle who is the tort-feasor can claim compensation from the owner and insurer was considered by the Hon'ble Apex Court in number of cases, wherein the Hon'ble Apex Court held that owner and driver of the vehicle who was a tortfeasor can not claim compensation from the Insurance Company."

10.Per contra the learned counsel appearing for the respondents 1 to 4 /petitioners/claimants relied upon the judgment of the Hon'ble Apex Court in the case of ***United India Insurance Co. Ltd., v. Sunil Kumar and another*** reported in ***2017 (2) TNMAC 753(SC)*** and the relevant portion of which, is extracted as follows:-

"1. Unable to agree with the reasoning and the conclusion of a two judge bench of this Court in National Insurance Co. Limited v. Sinitha and Ors. [MANU/SC/1374/2011 : (2012) 2 SCC 356] a coordinate bench of this Court by order dated 29th October, 2013 has referred the instant matter for a resolution of what appears to be the following question of law.

"Whether in a claim proceeding Under Section 163 A of the Motor Vehicles Act, 1988 (hereinafter referred to as "the Act") it is open for the Insurer to raise the defence/plea of negligence?"

3.In Sinitha's case (supra), a two judge bench of this Court understood the scope of Section 163A of the Act to be enabling an Insurer to raise the defence of negligence to counter a claim for compensation. The principal basis on which the conclusion in Sinitha's case (supra) was reached and recorded is the absence of a provision similar to Sub-section (4) of Section 140 of the Act in Section 163A of the Act. Such absence has been understood by the Bench to be a manifestation of a clear legislative intention that unlike in a proceeding Under Section 140 of the Act where the defence of the Insurer based on negligence is shut out, the same is not be the position in a proceeding Under Section 163A of the Act.

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 163A(2). Though the aforesaid Section of the Act does not specifically exclude a possible defence of the Insurer based on the negligence of the claimant as contemplated by Section 140(4), to permit such defence to be introduced by the Insurer and/or to understand the provisions of Section 163A of the Act to be contemplating any such situation would go contrary to the very legislative object behind introduction of Section 163A 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 an unduly long time. In fact, to understand Section 163A of the Act to permit the Insurer to raise the defence of negligence would be to bring a proceeding Under Section 163A 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.

9.For the aforesaid reasons, we answer the question arising by holding that in a proceeding Under Section 163A *of the Act it is not open for the Insurer to raise any defence of negligence on the part of the victim."*

11.He further relied upon the order passed by this Court in the case of ***Divisional Manager v. Amudha and others*** in ***C.M.A.(MD)No.649 of 2017*** dated 12.03.2020, wherein this Court has held that *'as per law precedents, if a larger bench has given a ratio, the latest decisions of the Honourable Division Bench may not be taken into consideration and only the law laid down by the Full Bench decision of the Honourable Supreme Court alone can be taken into consideration.'*

12.Further the learned counsel for the appellant relied upon the recent judgment of the Single Judge of this Court reported in ***2021 (2) TNMAC 314***. However, the Hon'ble Full Bench of the Hon'ble Apex Court in the case of ***United India Insurance Co. Ltd., v. Sunil Kumar and another*** reported in ***2017 (2) TNMAC 753(SC)*** has meticulously decided the question whether in the claim proceedings under Section 163A of Motor Vehicles Act, 1988, if it is open for an insurer to raise a defence - plea of negligence on the victim and has categorically held that the question arising by holding that in a proceeding Under Section 163A of the Act, it is not open for the Insurer to raise any defence of negligence on the part of the victim. To specifically distinguish the instant case in hand, the accident happened not due to negligence on the part of the deceased/victim but it happened only exclusive due to the sudden crossing of the dog unexpectedly in the course of his driving. As the result of which, he inevitably dashed as against the nearby tamarind tree and thereby, sustaining grievous injury.

13.In the light of the order passed by the Hon'ble Apex Court, I am not inclined to interfere with the award passed by the learned Tribunal. This Civil Miscellaneous Appeal stands dismissed. There shall be no order as to costs. Consequently connected miscellaneous petition is closed.

05.01.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes
Mrn

L.VICTORIA GOWRI, J.

Mrn

To

1.The Motor Accident Claims Tribunal,
Special District Court (MCOP), Tiruchirappalli.

2.The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.

C.M.A.(MD)No.417 of 2018

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