



C.M.A.(MD) No.1100 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.08.2024

CORAM

THE HON'BLE MR.JUSTICE SUNDER MOHAN

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1.Sathiya,
2.Minor.Jotheesh,
(Represented through her mother/natural guardian
first appellant M.Sathiya)
3.Chinnaiah,
4.Veyilmuthu.

... Appellants

Vs.

1.D.Anandraj,
2.The Divisional Manager,
National Insurance Company Ltd.,
3, North Veli Street,
Madurai – 625 001.

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicle Act, 1988, to set aside the award dated 11.01.2018 passed in M.C.O.P.No.294 of 2015 on the file of the Motor Accidents Claims Tribunal and District Judge, Madurai.



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For Appellant	: Mr.D.Manokaran
For Respondents	
for R1	: Mr.S.Hari Gopalakirshnan
for R2	: Ms.P.Malini

J U D G M E N T

The instant appeal has been filed by the claimants challenging the dismissal of the claim under Section 163A of the Motor Vehicle Act, 1988 and allowing the claim under Section 140 of the Motor Vehicle Act, 1988.

2. The appellants filed a claim petition before the Tribunal stating that while the deceased was riding the motorcycle, belonging to his employer, an unknown vehicle overtook the motorcycle and dashed against the motorcycle of the deceased, as a result of which, the deceased sustained fatal injuries. The appellants filed the claim petition against the owner of the vehicle, namely, the employer and the insurer of the said vehicle.

3. The Tribunal dismissed the claim petition filed under Section 163A of the Motor Vehicle Act, 1988 and awarded a sum of Rs.50,000/- under Section 140 of the Motor Vehicle Act, 1988.



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4. Heard learned counsel for the appellants and learned counsel for the respondents.

5. The point for consideration in the instant appeal is '*whether the Tribunal was right in rejecting the claim petition under Section 163A of the Motor Vehicle Act, 1988?*'

6. The issue raised by the appellants is no longer *res integra* in the decision rendered by the Hon'ble Supreme Court in the case of ***Ramkhiladi and another vs. United India Insurance Company and another reported in (2020) 2 SCC 550*** as held as follows:

“An identical question came to be considered by this Court in the case of Ningamma. In that case, the deceased was driving a motorcycle which was borrowed from its real owner and met with an accident by dashing against a bullock cart i.e. without involving any other vehicle. The claim petition was filed under Section 163-A of the Act by the legal representatives of the deceased against the real owner of the motorcycle which was being driven by the deceased. To that, this Court has observed and held that since the deceased has stepped into the shoes of the owner of the vehicle, Section 163-A of the Act cannot apply wherein the owner of the vehicle himself is involved.



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Consequently, it was held that the legal representatives of the deceased could not have claimed the compensation under Section 163-A of the Act. Therefore, as such, in the present case, the claimants could have even claimed the compensation and/or filed the claim petition under Section 163-A of the Act against the driver, owner and insurance company of the offending vehicle i.e. motorcycle bearing registration No. RJ 29 2M 9223, being a third party with respect to the offending vehicle. However, no claim under Section 163A was filed against the driver, owner and/or insurance company of the motorcycle bearing registration No. RJ 29 2M 9223. It is an admitted position that the claim under Section 163-A of the Act was only against the owner and the insurance company of the motorcycle bearing registration No. RJ 02 SA 7811 which was borrowed by the deceased from the opponent-owner Bhagwan Sahay. Therefore, applying the law laid down by this Court in the case of Ningamma, and as the deceased has stepped into the shoes of the owner of the vehicle bearing registration No. RJ 02 SA 7811, as rightly held by the High Court, the claim petition under Section 163-A of the Act against the owner and insurance company of the vehicle bearing registration No. RJ 02 SA 7811 shall not be maintainable.”

7. The above observations of the Hon'ble Supreme Court are self explanatory. Therefore, the Tribunal was right in rejecting the claim under Section 163A and awarded the compensation of Rs.50,000/- under Section 140 of the Motor Vehicle Act, 1988. Under such circumstances, no



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interference is called for.

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8. In view of the above, the second respondent/Insurance Company shall deposit the compensation of Rs.50,000/- with the interest @ 7.5% p.a., from the date of the claim petition till the date of realization (excluding the period of dismissal for default, if any) and costs, less the amount already deposited, if any, within a period of four (4) weeks from the date of receipt of a copy of this order.

9. On such deposit, the appellants 1, 3 & 4/claimants are entitled to withdraw the aforesaid amount as per the apportionment fixed by the Tribunal and costs, less the amount already withdrawn, if any, by filing appropriate applications before the Tribunal.

10. The Tribunal is directed to deposit the share amount of the minor claimant/second appellant herein in any one of the Nationalized Bank in an interest bearing Fixed Deposit, initially for a period of three years, renewable thereafter, till the minor attain majority. The guardian of the minor claimant/first appellant herein, who is her mother, is permitted to withdraw interest from the said deposit, once in three months and



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utilise the same for the welfare of the minor claimant/second appellant

herein.

11. In the result, this Civil Miscellaneous Appeal is dismissed. No costs.

29.08.2024

Index: Yes/ No
NCC: Yes / No
Speaking Order / Non-Speaking Order
apd

To:

1. Motor Accidents Claims Tribunal and District Judge,
Madurai

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



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SUNDER MOHAN, J.

apd

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