

(2009) 08 MAD CK 0403

In the Madras High Court

Case No : C.M.A. (MD) No. 92 of 2005 and C.M.P. (MD) No. 885 of 2005

National Insurance Co. Ltd.

APPELLANT

Vs

Madasamy, Muppidathi and Elamaran

RESPONDENT

Date of Decision : 17-08-2009

Acts Referred:

Motor Vehicles Act, 1988 — Section 163(A), 167

Citation : (2009) 08 MAD CK 0403

Hon'ble Judges : G.M. Akbar Ali, J

Bench : Single Bench

Advocate : Uma Ramanathan, for the Appellant; No appearance, for the Respondent

Final Decision : Dismissed

Judgement

G.M. Akbar Ali, J.—This Civil Miscellaneous Appeal is filed against the Decree and Judgment made in MCOP.OP No. 90 of 2003 dated 16.09.2004 on the file of the Motor Accident Claims Tribunal, (Principal District Judge), Srivilliputhur, Virudhunagar District. The appellant is the 2nd respondent. The claimants are the parents of the deceased one Govindaraj.

2. Background facts in a nutshell are as follows:

The deceased one Govindaraj died in a motor accident which took place on 06.03.2003. On that day, the deceased was engaged as a Driver of the van bearing registration No. TN-67/X-4696 and when the said van reached Kalasalingam College, Krishnankovil main road, it capsized due to heavy load. Due to the same, the deceased who was the driver, died on the spot. The claimants claimed a compensation before the Tribunal. The vehicle belongs to the 3rd respondent, insured with the appellant/Insurance Company, who resisted the claim on the ground that the accident had occurred due to rash and negligent driving of the deceased himself and the claimants ought to have filed a claim petition under Workmen's Compensation Act and the claim petition before the

Motor Accidents Claims Tribunal is not maintainable.

3. The Tribunal had framed the following issues:

(i) Whether the claim petition filed u/s 163A of M.V. Act, is maintainable?

(ii) What could be the compensation for which, the claimants are entitled to and payable by whom?

(iii) Whether the claimants ought to have filed a claim petition under Workmens' Compensation Act before the Commissioner of Labour?

4. The learned Counsel for the appellant would submit that the accident had occurred due to rash and negligent act of the deceased himself and therefore, the claim petition of the legal heirs before the Tribunal is not maintainable and hence, the claimants can very well approach the Commissioner of Labour for claiming compensation under Workmens' Compensation Act. The learned Counsel for the appellant also questioned the liability and the compensation awarded by the Tribunal. He further submitted that the award is liable to be set aside as the Tribunal had no jurisdiction to entertain the claim petition.

5. Heard the learned Counsel for the appellant and there is no appearance on behalf of the respondents.

6. While considering the first issue, the Tribunal had relied on a judgment of this Court reported in National Insurance Co. Vs. Tula Ram and Others, wherein this Court has held as follows:

Motor Vehicles Act, 1988, Section 163A read with second schedule - Rash and negligent driving - whether the Tribunal was justified in framing issue regarding rash and negligent driving in a claim u/s 163A

Held: No. claimants are not required to prove rash and negligent driving requirement of law would be that there should be admission of accident arising out of use of Motor vehicle which should result in death of permanent disability.

Further, the Tribunal relied on a decision of this Court reported in 2002 ACJ (Kokla Devi v. Chet Ram and Anr.) wherein this Court has held as follows:

Motor Vehicles Act, Section 163A read with second schedule - structured formula. Death of driver when the vehicle rolled down the road due to his own negligence - whether the legal heirs of the deceased are entitled to claim compensation u/s 163A

Held: yes: Section 163A starts with non obstants clause and is intended to have an over riding effect on all the provisions of existing law; it makes the owner or insurer liable to pay compensation for death of permanent disability due to accident arising out of the use of motor vehicle as indicated in the second schedule; while loading a claim under this provision of law even proof of negligence has been done away with.

After relying on the above said decisions, the Tribunal found that the claim petition is maintainable u/s 163A of the Motor Vehicles Act and the rash and negligent act of the driver need not be gone into and calculated the compensation and fixed the liability on the Insurance company.

7. While considering the 2nd issue, it is found that the deceased was 21 years old at the time of accident. He was a Driver and after considering the oral and documentary evidence, the Tribunal fixed the monthly income of the deceased at Rs. 1,500/-. After giving one third deduction towards personal expenses and applying the multiplier 13, the Tribunal calculated the loss of income at Rs. 1,87,200/-. The Tribunal also awarded a sum of Rs. 2,000/- for funeral expenses and for loss of estate Rs. 2,500/-. In toto, the Tribunal awarded a sum of Rs. 1,91,700/- as compensation.

8. In respect of the third issue, the Tribunal has held that the claimants are at liberty to approach the Motor Vehicle Accidents Claims Tribunal under Motor Vehicles Act or Workmen's Compensation Act, therefore, the claimants are entitled for compensation under the Motor Vehicles Act.

9. As far as the first issue is concerned, the claim petition is filed u/s 163A of the Motor Vehicles Act, which provides for payment of compensation on structured formula basis. It is well settled that the right to get compensation u/s 163A of the Act is an alternative where the compensation is awarded without proof of any fault and the claimant is not required to prove wrongful act or negligent or default of the vehicle concerned. It is rightly pointed out in 2002 ACJ (Kokla Devi v. Chet Ram and Anr.) in a case where the death of driver of the vehicle was caused when the vehicle rolled down the road due to his own negligence, the court held that even proof of negligence has been done away with u/s 163A of the Act.

10. In the instant case the vehicle capsized due to heavy load and the driver of the vehicle died, which is not due to the negligence of the driver and the claim of compensation is not on principles of fault liability.

Section 167 reads as follows:

167. Option regarding claims for compensation in certain cases.- Notwithstanding anything contained in the Workmen's Compensation Act, 1923 (8 of 1923) where the death of, or bodily injury to, any person rise to a claim for compensation under this Act and also under the Workmen's Compensation Act, 1923, the person entitled to compensation may without prejudice to the provisions of Chapter X claim such compensation under either of those Acts but not under both.

11. In the instant case, the accident had occurred when the vehicle capsized due to heavy load and the driver of the vehicle died on the spot. The claimants had two options, either to claim compensation under Workmen's Compensation Act, 1923 as the death had occurred during the course of employment or under the

provisions of the Motor Vehicle Act before the Tribunal. The claimants have chosen the Tribunal. Claim petition is filed u/s 163A of the Act where proof of negligence has been done away with. Therefore, the Tribunal was right in holding that the petition u/s 163A of the Act is maintainable.

12. In respect of the second issue, the Tribunal has awarded a just and reasonable compensation by applying the schedule. Therefore, I have no reason to interfere with that.

13. As far as the third issue is concerned, it is already stated that u/s 167 of the Act the claimant has options either to claim compensation under the Workmen's Compensation Act or under the Motor Vehicles Act and therefore, the claim petition is maintainable.

14. The findings of the Tribunal are based on valid materials and evidence, I do not find any error or legal infirmity in the order of the Tribunal so as to warrant interference.

15. In view of the foregoing reasons, the compensation awarded by the Tribunal at Rs. 1,91,700/- with interest at 9% p.a. from the date of petition is confirmed. Hence, the claimants are permitted to withdraw the award of compensation after adjusting the amount, if any, already withdrawn.

Accordingly, the Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected M.P. is closed.