

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 31.1.2011

Coram

THE HONOURABLE MR. JUSTICE B.RAJENDRAN

Civil Miscellaneous Appeal No.2947 of 2007

1.Lakshmi
2.Pitchamaiah

... Appellants/Petitioners

vs.

Metropolitan Transport
Corporation Limited,
Rep. By its Managing Director,
Pallavan Salai,
Chennai -2.

... Respondent/Respondent

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Award and decree dated 26.06.2007 made in M.C.O.P.No.3805 of 2004 on the file of the Motor Accidents Claims Tribunal, (V Judge, Court of Small Causes), Chennai.

For Appellants : Ms.S.Sarumathy

For Respondent : Mr.V.Kasi Viswanathan

JUDGMENT

This appeal is preferred by the appellants/claimants as against the Award and decree dated 26.06.2007 made in M.C.O.P.No.3805 of 2004 on the file of the Motor Accidents Claims Tribunal (V Judge, Court of Small Causes), Chennai questioning the reduction of the amount on the ground of contributory negligence.

2.The facts of the case are as follows:

On 08.03.2004 at about 8.30 p.m when the deceased a IX standard student was travelling as a passenger in Metropolitan Transport Corporation Bus bearing Registration No.TN-01 N-0136, the bus was driven by its driver in a rash and negligent manner with heavy speed from East to West at Vijayaraghava Road and when it took a left turn to go towards Parthasarathy Bridge, the deceased fell down from the bus and left rear wheel ran over the deceased. The

deceased was immediately taken to the hospital, but he died on the way to the hospital. Hence, the claimants claimed a sum of Rs.1,74,500/- as compensation before the Tribunal and the Tribunal awarded a sum of Rs.81,000/-. Aggrieved against the same, the claimants who are the parents of the deceased have come forward with this appeal.

3.The deceased is the son of the appellants and the deceased was studying in IX Standard at the time of the accident.

4.According to the learned counsel for appellants, the deceased was travelling in the Metropolitan Transport Corporation Bus and he fell down from the bus when the brake was applied by the driver. The lower Court taking into consideration the defence taken out by the Transport Corporation that the deceased was a passenger standing in the foot-board in violation and has contributed to the accident, reduced 50% of the amount from the award towards contributory negligence. Challenging this portion, the claimants filed the appeal and would contend as the petition is under Section 163-A of the Motor Vehicles Act, while so, the lower Court ought not to have gone into the question of contributory negligence at all unfortunately, the Court below deducted amount towards contributory negligence. Hence, this appeal.

5.Heard both sides. The learned counsel appearing for the appellants relied upon three decisions namely, 2009 ACJ 214 - Usha Rathore and others .Vs. National Insurance Co., Ltd. and others Division Bench judgment of Madhya Pradesh High Court, 2004 ACJ 934 - Deepal Girishbhai Soni and others .Vs. United India Insurance Co.,Ltd. the three Judges Bench of the Supreme Court and the latest decision of this Court made in C.M.A.No.1450 of 2003 dated 28.6.2010 wherein the question of contributory negligence under Section 163 A of the Motor Vehicles Act was discussed and it was finally held that in a petition under Section 163-A, contributory negligence cannot be gone into. It was also admitted that there was over crowding in the bus. Under Such circumstances, the appellants would only contend that since the accident was admitted liability to pay compensation was also admitted, reduction of 50% towards contributory negligence by the Court below has to be set aside.

6.The learned counsel appearing for the respondent would contend that in view of the fact that the deceased person died in the accident when he was travelling in the foot-board, which is against law, he has definitely contributed to the accident and there is nothing wrong in invoking contributory theory by the Court below even though the claim was made under Section 163 A. Therefore, absolutely there was a contributory negligence on the part of the deceased. Hence, the appeal filed by the claimants may be dismissed.

7. Heard both sides. The short point for consideration in the appeal is whether the question of contributory negligence can be taken into consideration in the appeal, when the petition filed is under Section 163-A.

8. In this case, the accident is admitted. The liability to pay compensation is also admitted by the Transport Corporation. But, dispute between the parties in this appeal is whether the Court below could reduce 50% of the amount under Contributory negligence as the passenger of the bus fell down from the bus and succumbed to injuries.

9. As per the facts submitted by both the parties and as per evidence, admittedly the deceased was travelling in the foot-board. It is a over crowded bus and it is a State owned bus. In a State owned bus it is a common feature that the people used to travel in the footboard, especially in peak hours. The Transport Corporation ought not to have permitted them to travel in the bus. But the fact remains that though the driver of the vehicle is not responsible for the person who travels in foot-board, the question arises whether because of the bus driver taking a turn and applied sudden brake, the passenger fell down and sustained injury or Whether the passenger's attitude of travelling in the foot-board contributed to the accident? No doubt, the passenger also was root cause for the accident. But, while analysing the claim under Section 163-A of the Motor Vehicles Act, it is useful to extract Section 163-A hereunder:

"Special provisions as to payment of compensation on structured formula basis:-

(1) Notwithstanding anything contained in this Act or in any other law for the time being in force or instrument having the force of law, the owner of the motor vehicle or the authorised insurer shall be liable to pay in the case of death or permanent disablement due to accident arising out of the use of motor vehicle, compensation, as indicated in the Second Schedule, to the legal heirs or the victim, as the case may be.

Explanation.- For the purposes of this subsection, "permanent disability" shall have the same meaning and extent as in the Workmen's Compensation Act, 1923 (8 of 1923).

(2) In any claim for compensation under subsection (1), the claimant shall not be required to plead or establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act or neglect or default

of the owner of the vehicle or vehicles concerned or of any other person.

(3) The Central Government may, keeping in view the cost of living by notification in the Official Gazette, from time to time amend the Second Schedule."

10. Section 163-A states that notwithstanding anything contained in the Act or in any other law for the time being in force or instrument having the force of law, the owner of the motor vehicle is liable to pay for the loss or death by the third party due to accident arising out of the use of motor vehicle. It was categorically stated that if any claim for compensation under Section 163 Sub-section (1) is filed, the claimant shall not be required to plead or establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act or neglect or default of the owner of the vehicle or the vehicles concerned or of any other person.

11. In this connection, the learned counsel for the appellants has pointed out the decision of the Division Bench of Madhya Pradesh High Court reported in 2009 ACJ 214 (USHA RATHORE AND OTHERS V NATIONAL INSURANCE COMPANY LTD. AND OTHERS). Paragraph 12 of the above said judgment is extracted hereunder:

"As per the normal interpretation of the provisions of Section 163-A of the Act of 1988, it has created a new right in favour of the claimants similar to the right under Section 140 of the Act of 1988. Liability to pay compensation in certain cases on the principle of no fault. The purpose of introducing Section 163-A is to provide compensation on the basis of structured formula as mentioned in Second Schedule appended to section 163-A and it is clear from the provisions of sub-section (2) that the claimant shall not be required to plead or establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act or neglect or default of the owner of the vehicle or vehicles concerned or of any other person, which clearly means that in a claim petition filed under Section 163-A, which is a special provision, the question of wrongful act or neglect or default of the owner of the vehicle or vehicles concerned or any other person shall not be examined nor required to be pleaded or established by the claimants and the Tribunal can decide compensation only on the basis of structured formula and that too instantly and expeditiously. Purpose of introducing this provision is to see that victims or injured get instant relief so

far as the pecuniary loss is concerned because that loss suffered by them requires instant and immediate relief. Any delay in grant of such compensation may make their life miserable."

12. He also pointed out the decision of Supreme Court reported in 2004 ACJ 934 (DEEPAL GIRISHBHAI SONI AND OTHERS V. UNITED INDIA INSURANCE COMPANY LTD.) wherein it is held in paragraphs 15 and 66 as follows:

"Learned counsel would contend that the Bench deciding Kodala's case, 2001 ACJ 827 (SC), misinterpreted and misconstrued the expression 'any other law' appearing in sub-section (5) of section 140 to mean "any other law for the time being in force as, for example, the Workmen's Compensation Act, 1923". The said expression, the learned counsel would contend, would embrace also the other provisions of the said Act. According to the learned counsel, the expression 'any other law' would by necessary implication include the other provisions of the Motor Vehicles Act having regard to the fact that the remedies provided for under Sections 163-A and 166 are distinct and separate and are based on different legal regimes. It was pointed out that whereas under the former 'adequate and rational compensation' is provided for, the latter provides for 'just compensation'.

We may notice that section 167 of the Act provides that where death of, or bodily injury to, any person gives rise to claim of compensation under the Act and also under the Workmen's Compensation Act, 1923, he cannot claim compensation under both the Acts. The Motor Vehicles Act contains different expressions as, for example, 'under the provision of the Act', 'provisions of this Act', 'under any other provisions of this Act' or 'any other law or otherwise'. In section 163-A, the expression 'notwithstanding anything contained in this Act or in any other law for the time being in force' has been used, which goes to show that Parliament intended to insert a non obstante clause of wide nature which would mean that the provisions of section 163-A would apply despite the contrary provision existing in the said Act or any other law for the time being in force. Section 163-A of the Act covers cases where even negligence is on the part of the victim. It is by way of an exception to section 166 and the concept of social justice has been duly taken care of."

13.As held in the above decisions Section 163 A of the Act covers cases where even negligence is on the part of the victim and it is by way of an exception to Section 166. Therefore, even assuming for a moment in this case that the victim has contributed to the accident as per the decision of the Supreme Court the Transport Corporation is liable for the accident.

14.In this connection, the learned Single Judge of this Court has followed the decision of the Supreme Court in the identical matter in C.M.A.No.1450 of 2003 dated 28.6.2010, the relevant portion of which is extracted here under:

"Further, it is to be noted that in the first line of the judgment, it is stated that "the petition is filed under Section 163-A of Motor Vehicles Act". But the Tribunal disregarded all the above factors and proceeded as, though the claim petition was filed under Section 163-A of the Act, awarded compensation under Section 166 of the Act. As per Section 163-A of the Act, negligence aspect need not be taken into consideration. The Supreme Court in the case of DEEPAL GIRISHBHAI SONI AND OTHERS VS. UNITED INDIA INSURANCE CO. LTD., reported in (2004 ACJ 934), has considered the scope of Section 163-A and 166 of the Act and held as follows:

"The provisions of Section 163-A would apply despite the contrary provisions existing in the said Act or any other law for the time being in force. Section 163-A of the Act covers cases where even negligence is on the part of the victim. It is by way of an exception to Section 166 and the concept of social justice has been duly taken care of".

Following the principles enunciated in the above judgment, the Tribunal is wrong in going into the issue of contributory negligence. Therefore, the said judgment squarely applies to the facts of the present case and it is held that the claimants are entitled to the compensation of Rs.3,27,000/- with interest at 9% per annum from the date of petition. The finding that there is contributory negligence on the part of the claimant is set aside. In respect of the award, there is no serious dispute. Therefore, the claimant is entitled to the compensation of Rs.3,27,000/- with interest at 9% per annum as worked out by the Tribunal. Accordingly, the Civil Miscellaneous Appeal is allowed. No costs."

15. When the petition is filed under Section 163 A of the Motor Vehicles Act, the Tribunal cannot go into the issue of contributory negligence and the findings of contributory negligence on the part of the claimants have to be set aside.

16. In this case, the lower Court though has stated that the accident was caused as stated in the claim petition and the claimants are entitled for compensation, it has failed to consider the fact that the petition was filed under Section 163-A of the Act, but not under Section 166 and reduced the compensation by 50%. The finding in so far as the contributory negligence is therefore set aside. The quantum awarded by the Court below is reasonable and it is hereby confirmed.

17. In the result, the claimants are entitled to the compensation of Rs.1,62,000/- with interest at 7.5% p.a as worked out by the Tribunal. Accordingly, the Civil Miscellaneous Appeal is allowed. No costs.

18. It is represented that the Transport Corporation had already deposited 50% of the award amount. The balance amount shall be deposited within a period of eight weeks from the date of receipt of a copy of this order. On such deposit, the appellants are permitted to withdraw their shares respectively.

Sd/-
Asst.Registrar

/True Copy/

Sub.Asst.Registrar

cla

To

1. The motor Accidents claims Tribunal,
(V Judge Court of small causes) Chennai.

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

+ 1 cc to Mr.V. Kasiviswanathan, Sr.6880
+ 1 cc to Mr.P.Manavalan, Sr.2494

C.M.A.No.2947 of 2007

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