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C.M.A.No.1765 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 28.06.2023

Delivered on : 25.08.2023

CORAM:

THE HONOURABLE **MR.JUSTICE C.KUMARAPPAN**

C.M.A.No.1765 of 2021

and

C.M.P.No.9397 of 2021

M/s.United India Insurance Company Ltd.,

No.5,Big Bazaar Street,

Dharapuram, Thirupur Distirct.

... Appellant /2nd Respondent

Vs.

1.Balasubramaniyan

2.Selvarathinam

3.Nagalakshmi

4.Dhandapani

5.Thangameenatchi

6.Sukuntha

7.Rajagopalan

8.Venkatraman

9.Ambujam

10.Ganesan

... Respondents 1 to 10/ Petitioners 1 to 10



C.M.A.No.1765 of 2021

11.M/s.Amster Products,
No.268, LKA Nagar,
Vellakovil, Kangayam Taluk,
Tiruppur Distirct – 638 111.

... 11th Respondent /1st Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the decree and judgment dated 17.03.2020, in M.C.O.P.No.141 of 2017, on the file of the Motor Accidents Claims Tribunal, Ariyalur (Chief Judicial Magistrate, Ariyalur).

For Appellant : Mr.C.Karthik

For Respondents : Mr.K.Sathish Kumar for R1 to R6, R8 to 10

: No appearance for R7 & R11

JUDGMENT

The instant Civil Miscellaneous Appeal is filed against the order, dated 17.03.2020, in M.C.O.P.No.141 of 2017, on the file of the Motor Accidents Claims Tribunal, Ariyalur (Chief Judicial Magistrate, Ariyalur).

2. The appellant herein is the second respondent / Insurance Company. The respondents 1 to 10 herein are the legal heirs of the deceased - Janakiammal / claimants and the 11th respondent herein is the first respondent before the Court below.

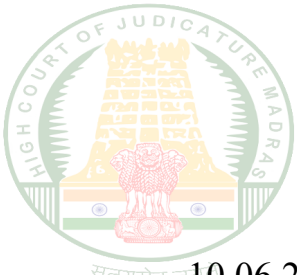


C.M.A.No.1765 of 2021

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3. For the sake of convenience, the parties are referred to according to their litigative status of the Court below.

4. The brief fact which gives rise to filing of the instant Appeal is that the petitioners / claimants have filed the claim petition on account of death of one Janakiammal in a road accident that had taken place on 06.02.2017 at about 4.00 pm. They would submit that, on 06.02.2017, when the deceased - Janakiammal was travelling in a two wheeler, bearing Registration No.TN-47-AU-5461, as a pillion rider, driven by her husband- Balasubramaniam, the first respondent vehicle, viz. TATA Mega Ace, bearing Registration No.TN-42-T-1706 driven by its driver, in a rash and negligent manner, dashed against the two wheeler bearing Registration No.TN-47-AU-5461. Due to such accident, the said Janakiammal sustained severe injuries and she was admitted in the hospital and was treated as inpatient from 07.02.2017 to 06.05.2017. According to the petitioners / claimants, the deceased - Janakiammal used to do handi craft work and earned monthly income of Rs.20,000/-. They would further submit that, during the pendency of the M.C.O.P, the said Janakiammal died on



C.M.A.No.1765 of 2021

10.06.2017. Therefore, the petitioners / claimants, who are the dependents of the deceased, prayed for compensation of Rs.90,00,000/-.

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5. Disputing the above pleadings, the second respondent / Insurance Company has filed a counter statement. Wherein, they disputed rash and negligent driving of the offending vehicle, and further submitted that the deceased's husband Mr.Balasubramaniyan has also contributed to the accident. They would further submit that, there is no nexus between the accident and the death of the deceased - Janakiammal. Therefore, he would submit that the application is liable to be dismissed.

6. Before the Court below, the petitioners / claimants have examined 2 witnesses as P.W.1 and P.W.2 and marked 27 documents as Ex.P1 to Ex.P27. On behalf of the respondents, no witness was examined and no document was marked. However, as a Court document Ex.C1 was marked.

7. The Court below, after considering the pleadings, material on record and evidence on either side, has awarded a sum of Rs.21,50,832/- with interest at the rate of 7.5% per annum.



C.M.A.No.1765 of 2021

WEB COPY

8. Aggrieved with the said order, the second respondent / Insurance Company has preferred this Civil Miscellaneous Appeal.

9. The learned counsel for the appellant / second respondent would submit that when the respondents / claimants have filed an application under Section 166 of the Motor Vehicles Act (Herein after called “**the Act**”), applying the principles of provision under Section 163-A of the Act, by the Court below is illegal, and would further submit that the medical bills, which has been submitted before the Court under Ex.P9 and Ex.P11 are only the “copy” of the bills and “original” bill was not filed. Therefore, the learned counsel for the appellant / second respondent would contend that having already reimbursed the medical bills, the respondents / claimants cannot have any 2nd claim under Section 166 of the Act. The learned counsel for the appellant / second respondent would rely upon the judgments of this Court reported in *2022-1-TNMAC - 217(DB) (Branch Manager, Oriental Insurance Co.Ltd., V. D.Varatharajan)*, *2022-1-TNMAC-611 (Mansoorabegum V. N.Malik Maddani)* and *2022-1-TNMAC-801 (Manager, TATA AIG General Insurance Co.Ltd., V. Kathamuthu)*, to support their case, and prayed to allow the appeal.



C.M.A.No.1765 of 2021

WEB COPY

10. Per contra, the learned counsel for the respondents 1 to 10/ claimants would submit that they have proved the nexus between the death of the deceased and the accident, and would further submit that, though the medical bills were referred to as a “copy”, they never claimed under Medi-claim policy and that the medical expenditures were borne by the respondents 1 to 10 / claimants personally. Therefore, he would submit that the objection raised by the appellant / Insurance Company is without any basis. The learned counsel for the respondents 1 to 10/ claimants would also submit that since the Motor Vehicles Act is a beneficial legislation, the application of Sections 166 and 163-A of the Act is interchangeable, which cannot be found faulted.

11. The learned counsel for the respondents 1 to 10/ claimants has also relied upon the judgment reported in **2011-11-SCC-513 (Oriental Insurance Company Limited V. Dhanabai Kanji Gadhvi), 2019-2-TNMAC-293(DB) (Chinnathamani V. Amman Granties) and 2022-1-TNMAC-102 (United India Insurance Co.Ltd., V. M.Bakiavathi)**. Thus, they prayed to confirm the award.



C.M.A.No.1765 of 2021

WEB COPY

12. I have given my anxious consideration to the either side submissions.

13. The first and foremost submission of the learned counsel for the appellant / Insurance Company is that the very application of principle under Section 163-A of the Act, in an application filed under Section 166 of the Act, is illegal. While considering the said submission, as rightly contended by the learned counsel for the appellant, the claim petition has been originally filed under Sections 140 and 166 of the Act. Further, even on perusal of the pleadings, this Court could not find any semblance of intention to claim compensation under Section 163-A of the Act. However, while deciding the issue, the Court below has applied the principle of Section 163-A of the Act and followed second schedule of the Act and has awarded a sum of Rs.5,00,000/- as compensation, towards dependency.

14. In this regard, the learned counsel for the appellant / Insurance Company would rely upon the judgment reported in **2022-1-TNMAC-611 (Mansoorabegum V. N.Malik Maddani)** (cited supra) and



C.M.A.No.1765 of 2021

WEB COPY

would contend that, when a claim once filed under Section 166 of the Act, then the claimant cannot turn around and seek indulgence of the Court under Section 163-A of the Act. The relevant portion of the judgment reads as follows:-

“19. This Court cannot go round and try to presume that inspite of such fact having been failed to be proved, still the petition could be considered as filed under Section 163A of the Motor Vehicles Act, 1988 and grant compensation. That would be stretching the law, a little to far. That is not at all the object of the Motor Vehicles Act, 1988. The claimants had the option to choose either one provision. Once they have taken upon themselves the task to discharge the burden under Section 166 of the Motor Vehicles Act, then they cannot turn around and seek indulgence under Section 163A of the Motor Vehicles Act.

20. In my view, that is impermissible and against the principles as laid down in the Motor Vehicles Act, 1988.

21. Mr. S. Arun Kumar, learned counsel appearing for the second respondent also pointed out a decision in 2004 ACJ 934 [(Deepal Girishbhai Soni Vs. United India Insurance)], wherein the Hon-ble Supreme Court had also



C.M.A.No.1765 of 2021

WEB COPY

frowned on the practice of converting an application under Section 166 of the Motor Vehicles Act, 1988, to an application under Section 163A of the Motor Vehicles Act, after finding that rash and negligent driving had not been established by the claimant.

22. This option to so consider an application under Section 166 Motor Vehicles Act, 1988 to one under Section 163~A Motor Vehicles Act, 1988 may be exercised before the trial commenced. But once trial has started and witnesses have grazed the witness box, then it remains an application under Section 166 of the Motor Vehicles Act, 1988. The facts asserted have to be proved, failing which the petition is dismissed.”

(Emphasis supplied by this Court)

15. The learned counsel has also relied upon the Division Bench judgment of this Court reported in **2022-1-TNMAC -217(DB) (Branch Manager, Oriental Insurance Co.Ltd., V. D.Varatharajan)**. Wherein, this Court has, in no uncertain terms held that, when a claim peition filed under Section 163-A of the Act, the Court below cannot determine compensation under Section 166 of the M.V.Act.



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C.M.A.No.1765 of 2021

16. At this juncture, while carefully considering the Ruling submitted by the respondents 1 to 10 / claimants, this Court could find even the Hon'ble Supreme Court in **2011-11-SCC-513 (Oriental Insurance Company Limited V. Dhanabai Kanji Gadhvi)** has categorically stated that the remedy for payment of compensation under Section 163-A and 166 of M.V Act being final and independent to each other. Further, the Hon'ble Supreme Court has also in categorical terms held that the compensation cannot be claimed simultaneously, under the both provisions. The relevant portion of the judgment reads as follows:-

*“11. The clear proposition of law which emerges from the decision of this Court in Deepal G. Soni (supra) is that the remedy for payment of compensation **both under Sections 163A and 166 being final and independent of each other as statutorily provided, a claimant cannot pursue his remedies thereunder simultaneously. As explained by this Court in the said decision, a claimant, thus, must opt/elect to go either for a proceeding under Section 163A or under Section 166 of the Act, but not under both.**”*

(Emphasis supplied by this Court)



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C.M.A.No.1765 of 2021

17. Therefore, it is crystal clear that when an application being filed under Section 166 of the Act, then, the Court is bound by the provisions under Section 166 of the Act and there cannot be any swap, after the commencement of trial between the principles under Section 166 of the M.V. Act and Section 163-A of the M.V.Act. But, in our case, inspite of the contention of the respondent - insurance company and contrary to the above settled legal position, the Court below has curiously, applied the principle under Section 163-A of the Act, and awarded higher compensation of Rs.5,00,000/-, based upon the recent amendment made in Section 163-A of the Act, on 01.01.2019.

18.First of all, as per the judgment cited herein above, application of Principle under Section 163-A of the Act, cannot be applied in an application filed under Section 166 of the Act. Even for argument sake, if we assume that the principles under Section 163-A could be applied, to this case, then the total compensation in all heads should only be Rs.5,00,000/-. However, the Court below by following the principle under Section 166 of



C.M.A.No.1765 of 2021

WEB COPY

the Act, has also awarded further compensation towards funeral expenses and for medical expenses. Therefore, this Court is of the view that the very award passed by the Court below by applying principles of both Section 163-A and Section 166 of the M.V.Act is contrary to the well settled legal position of the Hon'ble Supreme Court as well as our High Court. Hence, the impugned award is liable to be interfered with.

19. From the submission of the learned counsel for the appellant / respondent, this Court could not find any materials so as to have contrary view in respect of the rash and negligent in the finding of the Court below. Thus, this Court could not find any infirmity in respect of the finding of the Court below in rash and negligent upon the driver of the offending vehicle.

20. The next point is to be considered is nexus between the accident and the death of the deceased. Though it has not been seriously disputed before this Court, even while independently assessing material available before this Court, and also while considering the evidence of P.W.2-Doctor, this Court is of the firm view that the deceased died only due to the accident.



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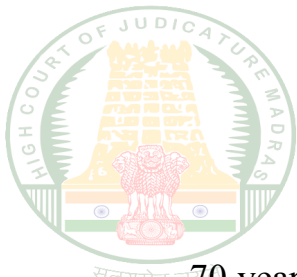


C.M.A.No.1765 of 2021

21. Now that this Court confirmed the finding of the Court below regarding rash and negligent of the offending vehicle, and the death of the injured due to the accident. As such the insurance Company qua this appellant is liable to pay compensation to the claimants.

22. After the above findings, the only point which remain for our determination is quantum of compensation. Here, as rightly submitted by the learned counsel for the appellant / insurance company, the deceased was 70 years old. Therefore, the notional income would be as Rs.6,000/-. Hence, this Court confirms the notional income determined by the Court below.

23. Considering the age, the deceased was aged about 70 years, at the time of accident. Hence, there could not be any future prospects. With regard to deduction towards personal and living expenses of the deceased, since the dependents are more than 6 persons, the appropriate deduction would be $1/5^{\text{th}}$ (Rs.6,000/- / 5 = Rs.1,200/-) and the multiplier for the age of



C.M.A.No.1765 of 2021

70 years is "5". Therefore, the total compensation, towards the dependency
WEB COPY

of the claimants is Rs.2,88,000/- (Rs.4,800/-X 12 X 5).

24. Though the learned counsel for the respondents / claimants has relied upon the judgment reported in **2022-1-TNMAC-102 (United India Insurance Co.Ltd., V. M.Bakiavathi)**,(cited supra) the same is in respect of Section 163-A of the M.V. Act. Here, we have already held elsewhere in this order that an application filed under Sections 166 can't be decided based upon the principles under Section 163-A of the M.V.Act. Further, the above judgment is not applicable to the present fact of the case.

25. The learned counsel for the appellant / insurance company would strenuously submit that Ex.P9 and Ex.P11 - medical bills are only the “copy” of the bills and that the same were marked only under objection. It is the submission of the learned counsel for the appellant / insurance company that, the claimants having been reimbursed those bill amounts from the medi-claim policy, cannot have a 2nd claim before the Motor Accident Claims Tribunal, under Section 166 of the M.V.Act.

26. However, the appellant / insurance company did not raise any

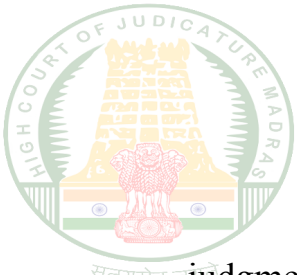


C.M.A.No.1765 of 2021

WEB COPY

objection in respect of the other medical bill marked under Ex.P10, 12 and 13. This Court has perused bills which has been marked as Ex.P10, 12 and 13. Wherein, the same do not contain the word “copy”. But, in Ex.P9 and Ex.P11, there is a reference that the same is copy. Therefore, the contention put forth by the learned counsel for the appellant / insurance company that, the claimants could have got reimbursement of Ex.P9 & P11 - the medical bills cannot be brush aside. Though there were no effective confrontation, while cross examining P.W.1, this Court on mere perusal of the above medical bills would find a word “copy”. The same would unequivocally, manifest that those are all not the original. Therefore, there is a duty cast upon the claimants to explain as to why they have not submitted the originals of these bills.

27. In this regard, the learned counsel for the appellant / insurance company has relied upon the judgment of this Court reported in **2022-1-TNMAC-801 (Manager, TATA AIG General Insurance Co.Ltd., V. Kathamuthu)** (cited supra). Wherein, this Court has held that if any amount has already been reimbursed from medi-claim policy, then the same, cannot be claimed under the M.V.Act. Even myself has also followed the above



C.M.A.No.1765 of 2021

judgment in the case reported in **2023-2-TNMAC-38 (S.Janakiraman Vs. R.Sekar)**.
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28. Therefore, this Court is of the view that in the interest of justice, there cannot be any claim for the medical bills- Ex.P9 and P11. Therefore the award for a sum of Rs.11,20,440/- in respect of medical bills-Ex.P9 and a sum of Rs.2,98,935/- in respect of medical bills - Ex.P10 is hereby ordered to be set aside. In respect of the other medical bills, Ex.P.11, P12 and P13, the award is hereby confirmed.

29. As per the judgment of the Hon'ble Supreme Court in **National Insurance Co.Ltd. V. Pranay Sethi** reported in (2017) 16 SCC 680, towards funeral expenses, the claimants are entitled for Rs.15,000/- For loss of estate, the claimants are entitled for Rs.15,000/-. As per the judgment of the Hon'ble Supreme Court in **Magma General Insurance Co. Ltd. v. Nanu Ram**, reported in 2018-18-SCC-130, for loss of love and affection, the claimants 2 to 6 are entitled to Rs.40,000/- each. Similarly, the first claimant is entitled to Rs.40,000/- towards loss of consortium.



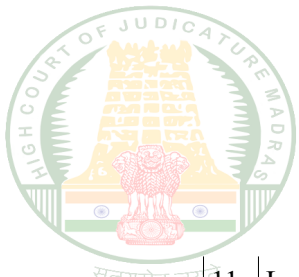
C.M.A.No.1765 of 2021

WEB COPY

30. In this case, the deceased - Janakiammal was admitted in the hospital for the period from 07.02.2017 till 06.05.2017 and has been shifted from Coimbatore to Karur and vice versa and also taken to Trichy Hospital. Therefore, this Court is of the view that an award of Rs.50,000/- towards transport expenses, would be fair and proper.

31. Thus, the total modified compensation is calculated as follows:-

<i>S. No</i>	<i>Various Heads</i>	<i>Awarded by the Tribunal</i>	<i>Awarded by this Court</i>	<i>Award confirmed or enhanced or increased or reduced</i>
1.	Compensation amount	Rs. 5,00,000/-	Rs. 2,88,000/-	Reduced
2.	Medical Bills: Discharge summary bills-Ex.P9	Rs.11,20,440/-	No award	Set aside
3.	Discharge summary bills-Ex.P10	Rs. 2,98,935/-	No award	Set aside
4.	Summary Cash Bills(Ex.P11)	Rs. 1,44,755/-	Rs. 1,44,755/-	Confirmed
5.	Summary Cash Bills(Ex.P12)	Rs. 55,936/-	Rs. 55,936/-	Confirmed
6.	Pharmaceutical Medical Bills (Ex.P13)	Rs. 15,766/-	Rs. 15,766/-	Confirmed
7.	Loss of consortium to the first claimant	....	Rs. 40,000/-	Awarded
8.	Loss of love and affection (9 claimants) each Rs.40,000/-	.....	Rs. 3,60,000/-	Awarded
9.	Transport Expenses	.....	Rs. 50,000/-	Awarded
10.	Funeral expenses	Rs. 15,000/-	Rs. 15,000/-	confirmed



C.M.A.No.1765 of 2021

11.	Loss of estate	....	Rs. 15,000/-	Awarded
	Total	Rs.21,50,832/-	Rs. 9,84,457/-	Reduced

32. In the result, the instant Civil Miscellaneous Appeal is **partly allowed** and the impugned award of the Tribunal is modified by reducing the compensation amount from **Rs.21,50,832/- to Rs. 9,84,457/-**. In the above award amount first claimant is entitled to **Rs.3,99,457/-** along with proportionate interest and costs and claimants 2 to 10 are entitled to **Rs.65,000/-each** along with proportionate interest.

33. The appellant/ Insurance Company is directed to deposit the amount to the credit of M.C.O.P.No.141 of 2017 along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit [except for the default period], and costs awarded by the Tribunal, less the amount, if any already deposited, within a period of six (6) weeks from the date of receipt of the copy of this judgment. Excess amount if any, shall be refunded to the appellant / Insurance Company.



C.M.A.No.1765 of 2021

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34. On such deposit being made, the respondents 1 to 10/ claimants are permitted to withdraw their share amount along with interest and costs as awarded in the ratio as apportioned by this Court, less the amount if any already withdrawn by them. There shall be no order as to costs in the present appeal. Consequently, connected Miscellaneous Petition is closed.

25.08.2023

NCC : Yes/No
Index : Yes/No
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To

1.The Motor Accidents Claims Tribunal,
Ariyalur, (Chief Judicial Magistrate, Ariyalur).

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



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C.M.A.No.1765 of 2021

C.KUMARAPPAN.,J.

Ls

Pre-delivery Judgment made in

C.M.A.No.1765 of 2021

25.08.2023