



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.10.2017

CORAM :

WEB COPY

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.M.A.(MD)No.764 of 2011

E.J.Baldwin

... Appellant/ Petitioner

vs

1.A.P.Malini

2.Bajaj Allianz General Insurance
Company Limited through its
Divisional Manager, Madurai
K.M.A.Complex, 12G, Ram Nagar,
Bye Pass Road, Madurai.

... Respondents / Respondents

Prayer: Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and decree dated 11.08.2010 of the Motor Accidents Claims Tribunal and Chief Judicial Magistrate Court, Madurai in M.C.O.P.No.1963 of 2004.

For Appellant

: Mr.I.Suthakaran

For Respondents

: No Appearance for R1

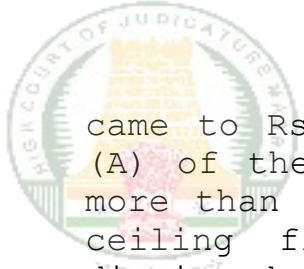
Mrs.KR.Sivasankari

for Mr.Srinivasa Raghavan for R2

JUDGMENT

This Civil Miscellaneous Appeal has been filed by the claimants, challenging the dismissal of M.C.O.P.No.1963 of 2004 by the Motor Accidents Claims Tribunal and Chief Judicial Magistrate Court, Madurai dated 11.08.2010.

2.The Claimant was driving the car bearing Registration No.TN59-S-6657, from Kodaikanal to Madurai. Two other passengers, namely, Ms.Henna Sumithrakumari and Mrs.Wilma Suganthi were travelling as passengers in the said car. All the three sustained injuries. The car was insured with the second respondent herein, namely, Bajaj Allianz General Insurance Company Limited. While the M.C.O.Ps filed by the injured passengers were allowed, M.C.O.P.No.1963 of 2004 filed by the appellant herein was dismissed. The said M.C.O.P. was originally filed under Sections 140, 141, 166 of the Motor Vehicles Act r/w Rule 3(1) of the Motor Vehicles Claim Tribunal Rules. It was later amended as one under Section 163(A) of the Motor Vehicle Act. The appellant herein had served as a Secretary in Y.M.C.A., Madurai and that he was earning Rs.9,000/- per month. Thus his annual income



came to Rs.1,08,000/-. To maintain a petition under Section 163 (A) of the Act, the annual income of the claimant should not be more than Rs.40,000/-. Since the annual income was more than the ceiling fixed in the second schedule, the learned Tribunal dismissed his claim petition. Aggrieved by the dismissal of the petition, the claimant has filed the instant appeal.

3.The learned counsel for the appellant filed a memo stating that he would restrict the appellants's annual income at Rs.40,000/-. The memo dated 12.09.2017 filed by the learned counsel for the appellant is taken on record. The learned counsel for the second respondent / Insurance Company would contend that the appellant is not eligible to sustain his claim under Section 163(A) of the Motor Vehicle Act and that Tribunal rightly dismissed the claim petition and he called upon this Court to sustain the impugned order passed by the Tribunal.

4.The Honourable Supreme Court in the decision reported in (2001) 5 SCC 175, The Oriental Insurance Company Limited Vs. Hansrajbhai V.Kodala & Ors held that the benefit under the said provision can be availed by the claimant only by restricting his claim on the basis of income at a slab of Rs.40,000/- which is the highest slab in the second schedule which indicates that the legislature wanted to give benefit of no fault liability to a certain limit. Even though the jural basis of Section 163(A) of the Motor Vehicles Act is the subject matter of reference to a larger bench of the Supreme court, this aspect laid down in (2001) 5 SCC 175, (The Oriental Insurance Company Limited Vs. Hansrajbhai V.Kodala & Ors) has not been doubted in any of the subsequent decisions. In other words, the said provision is intended to benefit those, whose annual income does not exceed the ceiling set out in the second schedule. The Honourable Supreme Court has specifically observed that the benefit can be availed by the claimant, if he restricts his claim on the basis of the ceiling set out therein. In other words, though the claimant's actual income may be above the ceiling limit, he can still restrict his income so as to render himself eligible to come within the four corners of the provision. In the present case, the claimant has chosen to restrict his annual income at Rs.40,000/-. It is seen that the Insurance Company has not adduced any evidence to hold that the claimant was the tort-feasor.

5.Therefore the question of finding the claimant guilty of negligence or contributory negligence would not arise in this case. Since, I have held that the claim petition filed by the appellant herein is maintainable, the next issue that is to be decided is the quantum of compensation to be awarded to him. The appellant was working as Secretary in Y.M.C.A., Madurai. He was aged about 59 years at the time of accident. He is suffered fracture in left forearm. He underwent treatment as an in-patient



in Christian Mission Hospital in Madurai for more than two weeks. The doctor has certified that he has suffered a partial permanent disability of 33%. Therefore, the compensation payable to the appellant can be quantified as follows;-

Partial Permanent Disability 33X2,000 : Rs.66,000/-
Pain and Sufferings : Rs.20,000/-
Extra Nourishment : Rs. 4,000/-
Transport & Damaged Articles : Rs.10,000/-

=Rs,1,00,000/-

6.The vehicle in question belongs to the first respondent and the same was insured with the second respondent / Insurance Company. Therefore, the second respondent is legally obliged to pay the amount of compensation as quantified above. The second respondent is directed to pay the sum of Rs.1,00,000/- (Rupees One Lakh only) with accrued interest at 7% per annum and costs from the date of petition till the date of realization to the appellant, within a period of eight weeks from the date of receipt of a copy of this order to the credit of M.C.O.P.No.1963 of 2004 on the file of the Motor Accidents Claims Tribunal and Chief Judicial Magistrate Court, Madurai. On such deposit, the claimant is permitted to withdraw the entire amount on filing proper application before the Tribunal.

7.This Civil Miscellaneous Appeal is allowed accordingly.

Sd/-

Assistant Registrar(CS-I)

/True Copy/

Sub Assistant Registrar

To

- 1.The Motor Accidents Claims Tribunal and
Chief Judicial Magistrate Court, Madurai.
- 2.The Record Keeper, Vernacular Section,
Madurai Bench of Madras High Court, Madurai.

+1cc to M/S.K.Sekar, Advocate SR.No. 82061

+1cc to M/S.S.Srinivasa Raghavan , Advocate SR.No. 82426

JUDGMENT MADE IN
C.M.A. (MD) No.764 of 2011
09.10.2017