

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.09.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Civil Miscellaneous Appeal No.1053 of 2015

IFFCO - TOKIO
General Insurance Company Ltd.,
Tulsi Chambers,
T.V.Samy Road,
R.S.Puram (West),
Coimbatore District. ..Appellant/2nd Respondent

Vs

1.S.Ilangovan ..1st Respondent/Petitioner
2.S.Elamurugan2ndRespondent/1st Respondent

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and decree made in M.C.O.P. No.228 of 2009, dated 28.10.2013 on the file of the Motor Accident Claims Tribunal (Additional District Judge), Namakkal.

For Appellant : Ms.K.Saraswathi

For Respondents: Mr.C.Thangaraju for R1
R2 No Appearance

O R D E R

This Civil Miscellaneous Appeal has been filed against the order dated 28.10.2013 passed in M.C.O.P.No.228 of 2009 on the file of the Motor Accident Claims Tribunal (Additional District Court), Namakkal, wherein and whereby the Tribunal directed the appellant-Insurance Company to pay a sum of Rs.1,85,000/- to the first respondent for the injuries sustained in a road traffic accident occurred on 16.8.2008.

2. Brief facts are that on 16.8.2008 at about 19.30 hours, the first respondent was driving Hero Honda motorcycle bearing registration No.TN-28 AB 8833 owned by the second respondent and he was nearing Sankari bus stop, opposite to Muniyandi villas hotel on the left side of the road in a moderate speed, an unknown and unidentified bus hit the motorcycle, due to which, the petitioner sustained grievous injuries all over the body. Immediately, after the accident, the petitioner was admitted as

in-patient at Government Hospital, Sankari, wherefrom he was taken to Kurinji Hospital, Salem and then admitted in K.G. Hospital, Coimbatore and altogether he had taken treatment for nearly 30 days. Regarding the accident, a criminal case in Crime No.716 of 2008 under Section 279 and 338 I.P.C. was registered at Sankari Police Station as hit and run. At the time of accident, the first respondent was aged 29 years and was working as Branch Manager in Sri Ram Chit Funds, Sankari and was earning a sum of Rs.4000/- per month. According to the first respondent, the second respondent is the owner of the motorcycle used at the time of accident and the appellant is the insurer of the motorcycle. Due to injuries sustained in the accident, the first respondent was not able to do his normal work. Hence, the first respondent filed the claim petition under Section 163-A of the Motor Vehicles Act, 1988 claiming compensation of Rs.5,00,000/- from the respondents.

3. Resisting the claim petition, the appellant has filed the counter stating that the first respondent was the driver of the Hero Honda motorcycle bearing registration No.TN-28AB 8833 and he drove the motorcycle with all due care and caution. It is stated that an unknown bus hit against the motorcycle and caused the accident. The First Information Report was also registered against the unknown bus driver for his rash and negligent driving. Since the accident occurred due to negligent act of the unknown bus driver, the driver of the motorcycle was not at all responsible for the accident. Therefore, the claim made by the first respondent against the appellant-Insurance Company is untenable. No amount of liability can be fixed on the appellant-Insurance Company. It is also stated that there is no valid policy coverage for the driver of the motorcycle and the driver was not entitled to file any claim before the Tribunal. The appellant denied the age, occupation and income of the first respondent and also the compensation claimed is highly excessive and prayed for dismissal of the claim petition.

4. Before the Motor Accident Claims Tribunal, the first respondent examined himself as P.W.1 and Dr.Sivalingam, who assessed the disability of the first respondent was examined as P.W.2. Exs.P1 to P13 were marked. On the side of the appellant, three witnesses were examined and Exs.R1 to R3 were marked.

5. Upon consideration of oral and documentary evidence, the Tribunal held that the first respondent is entitled to get compensation from the appellant-Insurance Company under Section 163A of the Motor Vehicles Act, 1988. Finding that the first respondent sustained 45% disability in the accident and due to injuries he was not able to do hard work, the Tribunal awarded total compensation of Rs.1,85,000/-. Being aggrieved by the order of the Tribunal, the appellant has preferred this appeal both on liability and also quantum of compensation awarded.

6. Heard Mrs.K.Saraswathi, learned counsel for the appellant and Mr.C.Thangaraju, learned counsel for the first respondent and also perused the materials available on record.

7. The learned counsel for the appellant submitted that the Tribunal ought to have held that Section 163A of the Motor Vehicles Act, 1988 (hereinafter referred to as "M.V. Act") is not applicable to the facts and circumstances of the case, as the case on hand is a fault liability. He would submit that in as much as the first respondent was driving in a rash and negligent manner his two wheeler and was unable to know the details of unknown vehicle, which alleged to be the offending vehicle, the Tribunal erred in passing the award against the appellant. According to the learned counsel, the Tribunal has not considered the oral and documentary evidence produced before it and arrived at a wrong conclusion fastening the liability on the appellant-Insurance Company. As far as the quantum of compensation is concerned, the total compensation of Rs.1,85,000/- awarded by the Tribunal is exorbitant and has no basis.

8. Per contra, the learned counsel for the first respondent submitted that in the claim petition filed under Section 163A of the M.V. Act, the insurer has no right to raise defence of negligence on the part of the victim. He would submit that Section 163A of the M.V. Act applies to all victims of motor accident whether they are inside or outside the vehicle. Therefore, the Tribunal was right in awarding the compensation to be payable by the appellant. In support of his submission, the learned counsel relied upon the following decisions:

- (i) Deepal Girishbhai Soni and others v. United India Insurance Company Ltd., Baroda, reported in (2004) 5 SCC 385.
- (ii) United India Insurance Co. Ltd. v. Sunil Kumar and another, reported in 2013 (2) TN MAC 737 (SC).
- (iii) United India Insurance Co. Ltd. v. Sunil Kumar and another, reported in 2017 (2) TN MAC 753 (SC).
- (iv) Shivaji and another v. Divisional Manager, United India Insurance Co. Ltd. and others, reported in 2018 (2) TN MAC 149 (SC)

9. The point that arises for consideration is whether the Tribunal was right in directing the appellant to pay compensation to the first respondent for the injuries sustained in the accident in question.

10. The first respondent has filed the claim petition under Section 163-A of the M.V. Act claiming compensation for the injuries sustained by him by use of the motorcycle bearing registration No.TN-29AB 8833 in a road traffic accident occurred on 16.8.2008.

11. Section 163-A of the M.V. Act under which compensation has been claimed by the first respondent provides as follows:-

"163-A. 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 authorized insurer shall be liable to pay in the case of motor vehicle or the authorized 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 purpose of this sub-section, "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 sub-section (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. "

12. Section 163-A of the M.V. Act was introduced in the Act by way of social security scheme. It is a Code by itself. It appears from the objects and reasons of the Motor Vehicles (Amendment) Act, 1994 that after enactment of the 1988 Act, several representations and suggestions were made from the State Governments, transport operators and members of public in relation to certain provisions thereof. Taking note of the observations by various Courts and the difficulties experienced in implementing the various provisions of the Motor Vehicles Act, the Government of India appointed a Review Committee. The Review Committee in its report made the following

recommendations:

"The 1988 Act provides for enhanced compensation for hit and run cases as well as for no fault liability cases. It also provides for payment of compensation on proof of fault basis to the extent of actual liability incurred which ultimately means an unlimited liability in accident cases. It is found that the determination of compensation takes a long time. According to information available, in Delhi alone there are 11214 claims pending before the Motor Vehicle Accidents Tribunals, as on 31-3-1990. Proposals have been made from time to time that the finalisation of compensation claims would be greatly facilitated to the advantage of the claimant, the vehicle owner as well as the Insurance Company if a system of structured compensation can be introduced. Under such a system of structured compensation that is payable for different clauses of cases depending upon the age of the deceased, the monthly income at the time of death, the earning potential in the case of the minor, loss of income on account of loss of limb etc., can be notified. The affected party can then have the option of either accepting the lump sum compensation as is notified in that scheme of structured compensation or of pursuing this claim through the normal channels.

The General Insurance Company with whom the matter was taken up is agreeable in principle to a scheme of structured compensation for settlement of claims on "fault liability" in respect of third party liability under Chapter XI of M.V. Act, 1988. They have suggested that the claimants should first file their claims with Motor Accident Claims Tribunals and then insurers may be allowed six months time to confirm their prima facie liability subject to the defences available under Motor Vehicles Act, 1988. After such confirmations of prima facie liability by the insurers the claimants should be required to exercise their option for conciliation under structured compensation formula within a stipulated time."

13. The recommendations of the Review Committee and representations from public were placed before the Transport Development Council for seeking their views pursuant where to several sections were amended. Section 163-A was inserted in the Act to provide for payment of compensation in motor accident cases in accordance with the second schedule providing for the structured formula which may be amended by the Central

Government from time to time.

14. The contention of the appellant is that the claim petition filed by the first respondent under Section 163-A of the M.V. Act is not maintainable, as the first respondent (injured) himself was riding the vehicle. Therefore, the Tribunal was not right in directing the appellant-Insurance Company to pay the compensation determined by it to the first respondent.

15. Whether Section 163-A of the M.V. Act founded on 'fault liability principle' or 'no fault liability principle' came up for consideration before the Hon'ble Supreme Court in a decision in United India Insurance Co. Ltd. v. Sunil Kumar and another, reported in 2013 (2) TN MAC 737 (SC), wherein the Hon'ble Supreme Court has referred to Two-Judges Bench decisions in National Insurance Co. Limited v. Sinitha and others, reported in 2012 (1) TN MAC 1 (SC) and Oriental Insurance Co. Ltd. v. Hansrajbha v. Kodala, reported in 2001 (2) CTC 368 (SC). Finding difficult to accept the reasoning expressed in National Insurance Co. Limited v. Sinitha and others, reported in 2012 (1) TN MAC 1 (SC), the Hon'ble Supreme Court in United India Insurance Co. Ltd. v. Sunil Kumar and another, supra, held as under:

"8. We are, therefore, of the view that liability to make Compensation under Section 163-A is on the principle of no fault and, therefore, the question as to who is at fault is immaterial and foreign to an enquiry under Section 163-A. Section 163-A does not make any provision for apportionment of the liability. If the owner of the vehicle or the Insurance Company is permitted to prove contributory negligence or default or wrongful act on the part of the victim or Claimant, naturally it would defeat the very object and purpose of Section 163-A of the Act. Legislature never wanted the Claimant to plead or establish negligence on the part of the owner or the driver. Once it is established that death or permanent disablement occurred during the course of the user of the vehicle and the vehicle is insured, the Insurance Company or the owner, as the case may be, shall be liable to pay the Compensation, which is a statutory obligation.

9. We, therefore, find ourselves unable to agree with the reasoning of the Two-Judge Bench in National Insurance Co. Limited v. Sinitha and others, 2012 (1) TN MAC 1 (SC). Consequently, the matter is placed before the learned Chief Justice of India for referring the matter to a Larger Bench

for a correct interpretation of the scope of Section 163-A of the Motor Vehicles Act, 1988, as well as the Point Nos.(iii) to (v) referred to in United India Insurance Co. Ltd. v. Shila Datta and others, 2011 (2) TN MAC 481 (SC)."

16. A Larger Bench of the Hon'ble Supreme Court has taken up the reference in United India Insurance Co. Ltd. v. Sunil Kumar and another, reported in 2017 (2) TN MAC 753 (SC), wherein Three-Judges Bench of the Hon'ble Supreme Court answered the reference as under:

"8.From the above discussion, it is clear that grant of Compensation under Section 163-A of the Act on the basis of the Structured Formula is in the nature of a Final Award and the adjudication thereunder is required to be made without any requirement of any proof of negligence of the Driver/Owner of the vehicle(s) involved in the accident. This is made explicit by Section 163-A (2). Though the aforesaid section of the Act does not specifically exclude a possible defence of the Insurer based on the negligence of the Claimant as contemplated by Section 140(4), to permit such defence to be introduced by the Insurer and/or to understand the provisions of Section 163-A of the Act to be contemplating any such situation would go contrary to the very legislative object behind introduction of Section 163-A of the Act, namely, final Compensation within a limited time frame on the basis of the Structured Formula to overcome situations where the claims of Compensation on the basis of fault liability was taking permit the Insurer to raise the defence of negligence would be to bring a proceeding under Section 163-A of the Act at par with the proceeding under Section 166 of the Act, which would not only be self-contradictory but also defeat the very legislative intention.

9.For the aforesaid reasons, we answer the question arising by holding that in a proceeding under Section 163-A of the Act, it is not open for the Insurer to raise any defence of negligence on the part of the victim."

17. Thus, from the aforesaid decision of the Larger Bench of the Hon'ble Supreme Court, it is clear that it is not open for the insurer to raise any defence of negligence on the part of the victim in a proceeding under Section 163-A of the M.V. Act.

18. In Shivaji and another v. Divisional Manager, United

India Insurance Co. Ltd. and others, supra, reported in 2018 (2) TN MAC 149 (SC), the Three-Judges Bench consisting of Dipak Misra, C.J.I., A.M.Khanwilkar and Dr.D.Y.Chandrachud, JJ. held as under:

"5. The issue which arises before us is no longer res integra and is covered by a recent Judgment of the Three-Judges of this Court in United India Insurance Co. Ltd. v. Sunil Kumar and another, 2017 (2) TN MAC 753 (SC) : AIR 2017 SC 5710, wherein it was held that to permit a defence of negligence of the Claimant by the Insurer and/or to understand Section 163-A of the Act as contemplating such a situation, would be inconsistent with the legislative object behind introduction of this provision, which is "final compensation within a limited time frame on the basis of the Structured Formula to overcome situations where the claims of Compensation on the basis of fault liability was taking an unduly long time". The Court observed that if an Insurer was permitted to raise a defence of negligence under Section 163-A of the Act, it would "bring a proceeding under Section 163-A of the Act at par with the proceeding under Section 166 of the Act which would not only be self-contradictory but also defeat the very legislative intention". Consequently, it was held that in a proceeding under Section 163-A of the Act, the Insurer cannot raise any defence of negligence on the part of the victim to counter for Compensation."

19. Thus, it is clear from the decisions of the Hon'ble Supreme Court that the appellant, who is the Insurer of the motorcycle bearing registration No.TN-28AB 8833 used at the time of accident, cannot raise any defence of negligence on the part of the victim to counter for compensation.

20. The expression used in Section 163-A of the M.V. Act, is 'accident arising out of the use of the motor vehicle' and not 'accident caused by the motor vehicle' or 'accident in which the motor vehicle is involved'. The adoption of the expression 'accident arising out of the use of the motor vehicle', in preference to 'accident caused by the motor vehicle', or 'accident in which the motor vehicle is involved' is, therefore, important and clearly indicates that a much wider meaning was intended by adoption of that expression. The Courts have consistently adopted a beneficial construction in such situations and held that the expression 'arising out of the use of the vehicle' be given a liberal and wide interpretation.

21. The appellant-Insurance Company admits that the first respondent is the driver of the motorcycle bearing registration No.TN-28AB 8833. Thus, from their version, it can easily be decided that the accident was arising out of the use of the motor vehicle bearing registration No.TN-28AB 8833.

22. At this juncture, it is pertinent to refer the decision of the Three-Judges Bench of the Hon'ble Supreme Court in Deepal Girishbhai Soni and others v. United India Insurance Co. Ltd., Baroda, reported in 2004(1) TN MAC (SC) 193, wherein, it has been held as under:

"46. Section 163-A has an overriding effect and provides for special provisions as to payment of compensation on structured formula basis. Sub-section (1) of Section 163-A contains a non-obstante clause, in terms whereof the owner of the motor vehicle or the authorised insurer is 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."

23. 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 the 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 provisions existing in the said Act or any other law for the time being in force. Thus, Section 163-A of the M.V. Act covers cases where even negligence is on the part of the victim.

24. In the grounds of appeal, the appellant-Insurance Company has stated that since the first respondent was rash and negligent driving of his two wheeler, he was not able to see details of the unknown vehicle, which alleged to be the offending vehicle. As stated supra, Section 163-A of the M.V. Act covers cases where even negligence is on the part of the victim.

25. No contra documents and contra decisions have been produced by the appellant-Insurance Company that the claim petition filed by the first respondent under Section 163-A of the M.V. Act not maintainable and cannot be entertained. In a catena of decisions, it has been held that Section 163-A of the M.V. Act applies to all victims of motor accident whether they are inside or outside of the vehicle.

26. In view of the above said narrated facts and the decisions of the Hon'ble Supreme Court, I am of the view that the injuries sustained by the first respondent were due to an accident arising out of the use of the motorcycle bearing registration No.TN-28AB 8833 and that the first respondent is entitled to claim compensation from the insurer of the motorcycle under Section 163-A of the M.V. Act.

27. As far as the quantum of compensation awarded by the Tribunal is concerned, it is to be mentioned that in the accident, the first respondent sustained grievous injuries all over the body, including bone fracture right knee, left wrist, right elbow, cut injury at forehead, jaw, right chest and right hip. It is seen that immediately, after the accident the first respondent was admitted in Government Hospital, Sankari, wherefrom he was taken to Kurinji Hospital, Salem. Thereafter, he was taken to K.G. Hospital, Coimbatore, where he had taken treatment as inpatient and altogether he had spent more than Rs.4,00,000/- towards medical expenses. As rightly stated by the Tribunal, the petitioner has not produced medical bills to show that he had spent more than Rs.4,00,000/- towards medical expenses.

28. It appears that the first respondent, who was examined as P.W.1 has spoken about the injuries sustained in the accident and also the treatment taken by him at various hospitals. The first respondent examined Dr.Sivalingam as P.W.2, who examined the first respondent and assessed the disability at 45%. Ex.P12 is the disability certificate. According to P.W.2-Doctor, due to injuries, the first respondent was not able to do hard work. To disprove the same, the appellant has not produced any materials.

29. At the time of accident, the first respondent was aged 29 years. To prove his age, the first respondent had produced Ex.P4-driving licence and Ex.P6-school transfer certificate. Though the petitioner had stated that at the time of accident he was working as Branch Manager in Shri Ram Chit Funds and was earning Rs.4,000/- per month, no documents have been produced to substantiate the same. However, taking into account the qualification of the first respondent, age and also injuries sustained in the accident, the Tribunal awarded Rs.30,000/- towards injuries. Considering the nature of injuries sustained in the accident and the period of treatment undergone by the first respondent at various hospitals, Rs.30,000/- awarded by the Tribunal towards injuries is reasonable and the same is maintained.

30. The Tribunal awarded Rs.90,000/- towards disability. As stated supra, P.W.2-doctor assessed the disability at 45% and in his evidence, P.W.2-doctor also stated that the injuries

sustained by the first respondent are grievous in nature. In view of the fact that in the accident the petitioner sustained grievous injuries and P.W.2-doctor assessed the disability at 45%, this Court is of the view that Rs.90,000/- awarded by the Tribunal towards disability is very reasonable and the same is also maintained.

31. The Tribunal awarded Rs.10,000/- towards transport charges, Rs.20,000/- towards extra-nourishment, Rs.30,000/- towards paid and suffering and Rs.5,000/- towards medical expenses, which were also appear to be just and reasonable and the same are maintained. Thus, the total compensation of Rs.1,85,000/- awarded by the Tribunal is confirmed.

31. In the facts and circumstances discussed above, we do not find any illegality in the award of the Tribunal directing the appellant to pay compensation of Rs.1,85,000/- with interest at the rate of 7.5% from the date of filing of the petition till the date of realisation of the amount. Thus, the Civil Miscellaneous Appeal is liable to be dismissed.

32. In the result, the Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed. The appellant is directed to deposit the compensation amount of Rs.1,85,000/- with interest at the rate of 7.5% per annum as ordered by the Tribunal, if not, already deposited, within a period of two months from the date of receipt of a copy of this order. The rest of the direction qua payment of balance court fee by the first respondent and default clause made in the order of the Tribunal remains unaltered.

-s/d-

Assistant Registrar (CS-IV)

True Copy

Sub-Assistant Registrar

To

The Motor Accident Claims Tribunal,
Additional District Judge
Namakkal.

C.M.A.No.1053 of 2015

GMR (CO)
SP(14/09/2018)