

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.09.2019

CORAM:

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

CMA.No.3033 of 2006

Gnanasekaran

...Appellant/Petitioner

.Vs.

1.V.Kannaiyan

2.National Insurance Co. Ltd.,
63, Rasi Plaza,
Pradhakshinam Road,
Karur.

... Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and Judgment dated 17.02.2006 passed in MCOP.No.972 of 2004 on the file of the Motor Accident Claims Tribunal / Additional District Court (Fast Track Court No.1), Salem.

For Appellant : Mr.N.Manokaran

For Respondents : Mrs.N.B.Surekha for R2
No appearance for R1

JUDGMENT

The appellant is the claimant in MCOP.No.972 of 2004 on the file of the Motor Accident Claims Tribunal / Additional District Court (Fast Track Court No.1), Salem. He filed the claim petition under Section 163-A of the Motor Vehicles Act, 1988 seeking compensation of Rs.8,00,000/- for the injuries sustained by him in a road accident that took place on 02.11.2002.

2. The case of the claimant is that on 02.11.2002, at about 02.30 am, when he was driving a bus bearing Registration No.TN 27 N 1325 on Villupuram - Salem National Highways, a lorry bearing Registration No. TN 57 0799 belonging to the first respondent and insured with the second respondent came with a high speed near Sengurichi and dashed against the bus, as a result of which, the claimant and other passengers sustained injuries. According to the claimant, the rash and negligent driving of the driver of the lorry bearing Registration No. TN

57 0799 was the cause of the accident and hence, the owner of the lorry as well as the Insurance Company are liable to pay compensation to him jointly and severally.

3. The first respondent, owner of the lorry remained absent before the Tribunal and therefore he was set exparte. The second respondent, National Insurance Company Limited contested the claim petition. The Motor Accident Claims Tribunal / Additional District Judge (Fast Track Court No.1), Salem though came to a conclusion that the claimant is entitled to a compensation of Rs.3,32,500/-, dismissed the entire claim petition on the ground that, since the driver of the bus (claimant) was responsible for the accident, he cannot claim compensation from the owner of the lorry and its Insurance Company. Aggrieved over the orders passed by the Tribunal, the claimant has filed the present appeal.

4. Mr.N.Manokaran, learned counsel appearing for the appellant / claimant contended that though the claim petition was filed only under Section 163-A of the Motor Vehicles Act, 1988, the Tribunal has converted the same as one filed under Section 166 (1) of the Motor Vehicles Act, 1988. He would further contend that the driver of the bus bearing Registration No. TN 27 N 1325 was driving his bus at a moderate speed and that the driver of the first respondent alone drove his lorry rashly and negligently, which resulted in the accident. His specific contention is that since the first respondent's driver is a wrong doer, the dismissal of the claim petition by the Tribunal cannot be sustained.

5. He also relied on the following decisions.

i] IFFCO-TOKIO, General Insurance Company Limited, Coimbatre Vs. S.Ilangovan and another in CMA No.1053 of 2015 dated 07.09.2018

ii] Shivaji and another Vs. Divisional Manager, United India Insurance Company limited reported in 2018(2) TN MAC 149 (SC)

iii] United India Insurance Company Limited Vs. Sunil Kumar and another reported in 2017(2) TN MAC 753 (SC)

and contended that

- (a) In a proceedings under Section 163-A of the Motor Vehicles Act, it is not open for insurer to raise defence of negligence on the part of the victim.
- (b) Permitting insurer to raise defence of negligence would bring proceedings under Section 163-A at par with proceeding under Section 166 and defeat very legislative intent.

- (c) Section 163-A of the Motor Vehicles Act covers cases, where, even negligence is on the part of the victim.

6. Liability of the insurer to indemnify the insured and to compensate the claim under Motor Vehicles Act is as follows.

- (i) No fault liability under Section 140 of the Motor Vehicles Act.
- (ii) On fault liability under Section 166 of the Motor Vehicles Act.
- (iii) Structured Formula under Section 163-A of the Motor Vehicles Act.

When Section 166 of the Motor Vehicles Act contemplates proof of negligence to get compensation from the insured and the insurer, the claimants are relieved from the burden of proving negligence, as far as the claim made by them under Section 163-A of the Motor Vehicles Act. Section 163-A was introduced by an amendment in 1994 and the Second Schedule was appended to the Motor Vehicles Act. It also provides a Structured Formula for the purpose of awarding compensation. The Second Schedule mandates that the amount of compensation would not be less than Rs.50,000/- and prescribes grant of compensation under different heads. The annual income of Rs.40,000/- is stipulated as the cap to invoke provisions of Section 163-A.

7. Section 163-A of the Motor Vehicles Act is intended for those classes of people, who hail from the lower strata of the society, whose annual income do not exceed Rs.40,000/-. The Motor Vehicles Act, 1988 has been amended in 1994 with an avowed object of granting a higher quantum of compensation and to leave the claimants from the burden of proving negligence.

8. In the instant case, the claimant has filed the claim petition only under Section 163-A of the Motor Vehicles Act. The Tribunal, even without noticing this, had converted the entire claim petition into one under Section 166 of the Motor Vehicles Act. A Larger Bench of the Supreme Court in United India Insurance Company Limited Vs. Sunil Kumar and another reported in 2017(2) TN MAC 753 (SC) has clearly held that in a proceedings 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. Merely because the Tribunal framed an issue with regard to negligence aspect, the entire claim petition cannot be converted into one filed under Section 166 of the Motor Vehicles Act. Infact, the Tribunal has fixed the entire responsibility on the driver of the bus bearing registration No.TN 27 N 1325.

9. When the claimant has filed the petition under Section 163-A of the Motor Vehicles Act, 1988, the Tribunal should not have gone into the aspect of negligence. Furthermore, it is to be noted that it is a case of head on collision between two heavy motor vehicles and merely on the basis of the First Information Report, which is filed solely against the bus driver, it cannot be held that the driver of the bus alone was responsible for the accident. Moreover, in the instance case, the driver of the bus had filed the claim petition against the driver of the lorry only under Section 163-A of the Motor Vehicle Act, 1988.

10. Mrs.N.B.Surekha, learned counsel appearing for the second respondent, National Insurance Company Limited fairly conceded that the claimant is entitled to be compensated. She has also furnished a memo of calculation which is extracted hereunder:

"As per Section 163-A of the Motor Vehicles Act.		
Medical Expenses	-	Rs.15,000/-
pain and sufferings	-	Rs.5,000/-
Loss of income and		
permanent disablement	-	Rs.40,000/-
Total	-	Rs.60,000/-"

11. Per contra, the learned counsel appearing for the appellant / claimant contended that as per the structured formula appended in the II Schedule of the Motor Vehicles Act, 1988, a sum of Rs.2,60,000/- should be awarded to the claimant towards loss of earning capacity apart from awarding a sum of Rs.5,000/- towards pain and sufferings and a sum of Rs.15,000/- towards medical expenses. He would therefore contend that the total sum of Rs.2,80,000/- should be awarded to the claimant together with interest at the rate of 7.5% per annum.

12. In the instance case, the driver has sustained a partial permanent disability of 50% and as per the Structured Formula appended to the II Schedule of the Motor Vehicles Act, 1988, the claimant is entitled for a compensation as mentioned below:

S.No	Head	Amount granted by this Court
1.	Loss of earning capacity	Rs.40,000/- x 13 x 50/100 = Rs.2,60,000/-
3.	Pain and sufferings	Rs.5,000/-
3.	Medical expenses	Rs.15,000/-
Total		Rs.2,80,000/-

13. In the result,

(i) The Civil Miscellaneous Appeal is partly allowed. No costs.

(ii) The orders passed by the Tribunal is set aside.

(iii) The appellant / claimant is entitled to a compensation of Rs.2,80,000/- together with interest at the rate of 7.5% per annum.

(iv) The appellant / claimant is directed to pay the court fee for the compensation amount, if any, and the Registry is directed to draft the decree only after the receipt of Court fee.

(v) The second respondent is directed to pay the compensation of Rs.2,80,000/- together with interest at the rate of 7.5 % per annum from the date of claim petition till the date of deposit to the credit of MCOP.No. 972 of 2004 on the file of the Motor Accident Claims Tribunal / Additional District Court (Fast Track Court No.1), Salem within a period of four weeks from the date of receipt of a copy of this order.

(vi) On such deposit being made, the appellant / claimant is at liberty to withdraw the same after following due process of law.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

The Motor Accidents Claims Tribunal,
The Additional District Court,
Fast Track Court No.1,
Salem.

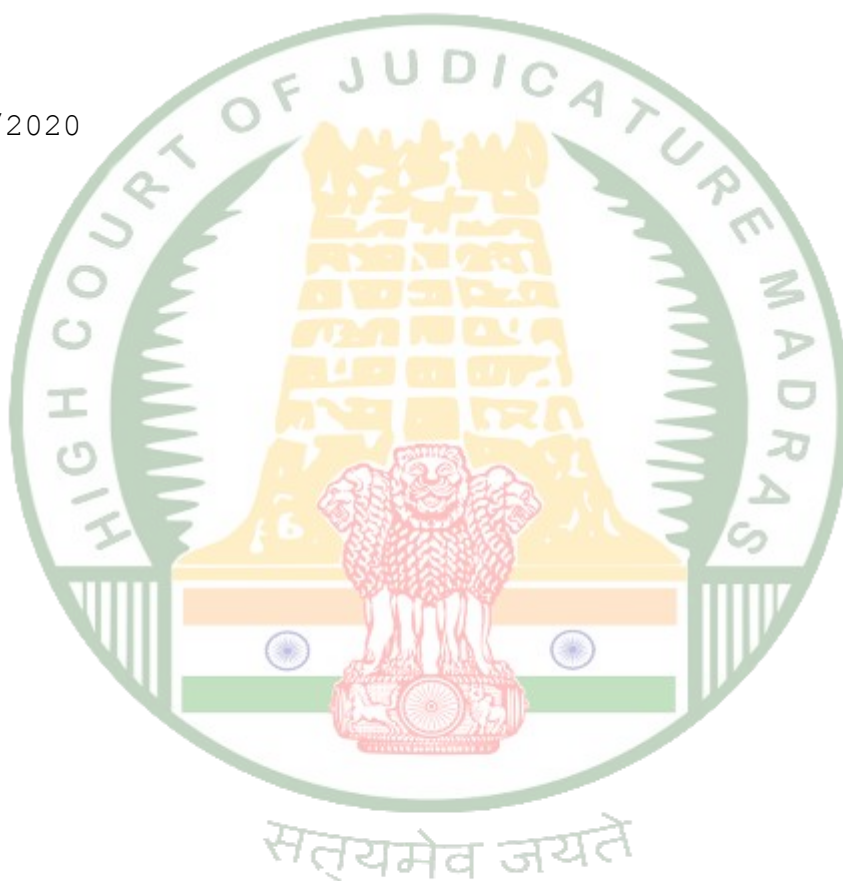
Copy to

The Section Officer,
VR Section, High Court, Madras.

+1cc to Mr.N.Manokaran, Advocate Sr.76668
+1cc to Mrs.N.B.Surekha, Advocate Sr.76818

CMA.No.3033 of 2006

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srg 02/06/2020



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