IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 24.07.2019
DELIVERED ON : 09.08.2019

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.787 of 2007
and M.P.No.1 of 2007

United India Insurance Co.Ltd.,
Puduchampalli, Mettur Dam-636 403,
Salem District. ... Appellant/2nd Respondent

Vs

1.S.Shanmugam ...1st Respondent/Petitioner

2.P.Kuppan ...2nd Respondent/1st Respondent

Appeal filed under Section 173 of the Motor Vehicles Act against the judgment and decree dated 20.10.2006 made in MACTOP No.156 of 2003 on the file of the Motor Accidents Claims Tribunal (Subordinate Judge), Mettur.

For Appellant : Mr.K.Suryanarayanan

For Respondents : Mr.P.Valliappan for R1

JUDGMENT

This appeal is preferred by the owner of the vehicle and the Insurance Company against the award of a sum of Rs.3,76,500/- towards compensation to the first respondent, due to the injuries suffered by him, in a motor vehicle accident.

2.The case in brief, is as follows:

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On the fateful day, ie., on 20.12.2002, at about 06.30 a.m., the first respondent was driving the TVS-50 two-wheeler bearing Reg.No. TN-27-Y-9853 in the Mettur - Bhavani Main Road. When the two-wheeler reached near Mettur ITI in front of Mariyamman Temple, a tempo van, driven by its driver in a rash and negligent manner, dashed against the TVS-50. Due to the said impact, the first respondent was thrown away and sustained injuries. The TVS-50 thereafter hit against a pedestrian by name Munniyan, who also sustained injuries. Causing the accident, the driver of the tempo van took away the van immediately and ran away. The first respondent filed a claim petition before the Tribunal. On consideration of the materials and evidence available on record, the Tribunal awarded a total compensation of Rs.3,76,500/- with interest at the rate of 7.5% per annum from the date of petition.

3.Challenging the same, the appellant Insurance Company has come up with this appeal.

4.The learned counsel for the appellant Insurance Company has submitted that the Tribunal has erroneously fastened the liability on the appellant Insurance Company, the insurer of the TVS-50 moped driven by the injured, when the fact remains that the accident had been caused by an unknown tempo van, applying the principles laid down under Section 163-A of the Motor Vehicles Act, 1988, when admittedly, the claim petition was filed under Section 166 of the Act. The Tribunal has failed to see that the liability of the appellant Insurance Company arises in respect of an accident, in which the victim of the accident is a third party and not the rider of the insured vehicle. He also submitted that the compensation awarded by the Tribunal is excessive and exorbitant.

5.The learned counsel for the first respondent-claimant has submitted that the Tribunal has correctly considered the materials and evidence available on record and has passed the impugned judgment, which does not require any interference in the hands of this Court. He also relied upon the judgment of the Hon'ble Supreme Court in the case of United India Insurance Co.Ltd. v. Sunil Kumar and another, reported in 2017 (2) TNMAC 753 (SC), to state 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.

6.Heard the learned counsel for the appellant and the learned counsel for the first respondent and perused the materials available on record carefully and meticulously.

7.The appellant is the insurer of the TVS-50 moped, driven by the injured/first respondent. The second respondent is the owner of the TVS-50 moped involved in the accident. The finding of the Tribunal that the accident had occurred only due to the rash and negligent driving of the driver of the tempo van, is not disputed by both the sides.

8.This is a hit and run case. The question to be decided is, whether the claimant is entitled to get compensation from

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the insurer of the TVS-50 moped or not, when the fact remains that the tempo van, which caused the accident, fled away immediately after the accident? The Tribunal relied upon the decision of the Hon'ble Supreme Court in the case of Kaushnuma Begum and others v. The New India Assurance Co.Ltd. And others, reported in 2001 (2) MLJ 112 : 2001 (2) SCC 9, wherein it has been held that even though the accident had not occurred due to the negligence of the driver of the vehicle, if the case is not falling under the seven exceptions pointed out in Rylands vs. Fletcher (1861-1873 All England Reports 1), then it has to be inferred that the accident had occurred due the negligence on the part of the driver, and in that context the injured and deceased relating to the accident, can claim compensation from the owner of the vehicle. It was put forth on the side of the Insurance Company which insured the TVS moped that since no criminal case or charge sheet has been filed against the driver of the TVS moped, the Insurance Company is not liable to pay any compensation to the claimant, when the fact remains that the accident had occurred only due to the rash and negligent driving of the driver of the unknown van. But, relying upon the above decision of the Hon'ble Supreme Court and also taking note of the fact that the insurance policy of the TVS moped covers the third party also, the Tribunal made both the owner and the Insurance Company of the TVS moped liable to pay the compensation, jointly and severally.

9.This Court has perused the judgment of the Hon'ble Supreme Court in Kaushnuma Begum's case (cited supra). In that judgment, the Hon'ble Supreme Court relied upon its another judgment in Gujarat State Road Transport Corporation, Ahmedabad vs. Ramanbhai Prabhatbhai and another, 1987 (3) SCC 234. The relevant portion is extracted hereunder:

> "In Gujarat State Road Transport Corporation, Ahmedabad vs. Ramanbhai Prabhatbhai and another, 1987 (3) SCC 234, the question considered was regarding the application of the Rule in cases arising out of motor accidents. The observation made by E.S. Venkataramiah, J. (as he then was) can profitably be extracted here: Today, thanks to the modern civilization, thousands of motor vehicles are put on the road and the largest number of injuries and deaths are taking place on the roads on account of the motor vehicles accidents. In view of the fast and constantly increasing volume of traffic, the motor vehicles upon the roads may be regarded to some extent as coming within the principle of liability defined in Rylands v. Fletcher. From the point of view of the pedestrian the roads of this country have been rendered by the use of the motor vehicles highly dangerous. Hit and run cases where the drivers of the motor vehicles who have caused the accidents are not known are increasing in number.

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Where a pedestrian without negligence on his part is injured or killed by a motorist whether negligently or not, he or his legal representatives as the case may be should be entitled to recover damages if the principle of social justice should have any meaning at all. In order to meet to some extent the responsibility of the society to the deaths and injuries caused in road accidents there has been a continuous agitation throughout the world to make the liability for damages arising out of motor vehicles accidents as a liability without fault.

Like any other common law principle, which is acceptable to our jurisprudence, the Rule in Rylands vs. Fletcher can be followed at least until any other new principle which excels the former can be evolved, or until legislation provides differently. Hence, we are disposed to adopt the Rule in claims for compensation made in respect of motor accidents.

No Fault Liability envisaged in Section 140 of the MV Act is distinguishable from the rule of strict liability. In the former the compensation amount is fixed and is payable even if any one of the exceptions to the Rule can be applied. It is a statutory liability created without which the claimant should not get any amount under that count. Compensation on account of accident arising from the use of motor vehicles can be claimed under the common law even without the aid of a statute. The provisions of the MV Act permits that compensation paid under no fault liability can be deducted from the final amount awarded by the Tribunal. Therefore, these two are resting on two different premises. We are, therefore, of the opinion that even apart from Section 140 of the MV Act, a victim in an accident which occurred while using a motor vehicle, is entitled to get compensation from a Tribunal unless any one of the exceptions would apply. The Tribunal and the High Court have, therefore, gone into error in divesting the claimants of the compensation payable to them."

10.In the decision of the Hon'ble Supreme Court in United India Insurance Co.Ltd. v. Sunil Kumar and another, reported in 2017 (2) TNMAC 753 (SC), which has been relied upon by the learned counsel for the first respondent, it has been held as under:

"8.From the above discussions, 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

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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 an unduly long time. In fact, to understand Section 163-A of the Act to 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."

11.In view of the principles enunciated in the above decisions of the Hon'ble Supreme Court, this Court has no hesitation to confirm the judgment of the Tribunal, in respect of fixing the negligence on the part of the owner and the insurer of the TVS moped.

12.Now, coming to the quantum of compensation awarded by the Tribunal, the Tribunal has awarded a sum of Rs.2,40,000/- towards loss of income. This amount has been awarded taking the monthly income of the injured as Rs.5,000/-, arriving at the annual income at Rs.60,000/- and multiplying the said amount with 4, since the injured resigned the job from M/s.Mettur Spinning Mills, four years prior to superannuation. The Tribunal has also awarded a sum of Rs.64,114/- towards medical expenses based on the actual expenditure incurred as per Ex.P4-Medical Bills, Rs.40,000/- towards 40% disability fixed by P.W.3-Doctor as per Ex.P16, Rs.5,000/- each towards nutritious food and extra nourishment, Rs.5,000/- towards one simple injury, Rs.15,000/- towards one grievous injury and Rs.2,000/- towards transport expenses. The Tribunal has correctly analysed the materials and evidence available on record and correctly awarded the amounts towards these heads, totalling to Rs.3,76,114/-, rounded off to Rs.3,76,500/-. Hence the compensation awarded by the Tribunal at Rs.3,76,500/- with interest at the rate of 7.5% per annum from the date of petition is confirmed.

13.In view of the above stated circumstances, the Civil Miscellaneous Appeal is dismissed, confirming the impugned

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judgment and decree passed by the Tribunal. No costs. Consequently, the connected miscellaneous petition is closed.

14.The appellant Insurance Company is directed to deposit the award amount with interest as ordered by the Tribunal, after deducting the amount if any already deposited, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the first respondent / claimant is permitted to withdraw the same, on making proper application before the Tribunal.

Sd/-

Assistant Registrar (Ad I)

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Sub Assistant Registrar

KM

To

1.The Motor Accidents Claims Tribunal,
Subordinate Judge, Mettur.

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

+1cc to Mr.K.Suryanarayanan, Advocate, S.R.No. 68393
+1cc to Mr.P.Valliappan, Advocate, S.R.No. 68613

C.M.A.No.787 of 2007
and
M.P.No.1 of 2007

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