IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON 03.01.2019

DELIVERED ON 22.01.2019

CORAM:

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

CMA.No.3487 of 2010 and
M.P.No.1 of 2010

National Insurance Company Limited,
Tuticorin. ... Appellant/2nd respondent

Vs.

1. P.Elangovan ... 1st respondent/claimant/ Petitioner

2. K.Marimuthu ... 2nd respondent/ 1st respondent

PRAYER:This Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988, against the orders passed by the Motor Accidents Claims Tribunal, Fast Track Court, Namakkal in MCOP No.701 of 2005 on 07.11.2009.

For Appellant : Mr.D.Bhaskaran
For first Respondent : Mr.C.Thangaraju
For 2nd respondent : No appearance

J U D G M E N T

The appellant, The National Insurance Company Limited, Tuticorin is the 2nd respondent in MCOP No.701 of 2005 on the file of the Fast Track Court, Motor Accident Claims Tribunal, Namakkal.

The first respondent/claimant filed the claim petition under Section 163-A of the Motor Vehicles Act, 1988 seeking compensation of Rs.5,00,000/- for the injuries sustained by him in a road accident that took place on 07.09.2004. According to the claimant, On 07.09.2004, he was riding his two wheeler TVS Suzuki bearing registration No.TN-28-H-0709 along Bodupatti Bus stop and at about 12.00 hours, a speeding lorry bearing registration No. TCE-9897 belonging to the 2nd respondent herein, hit the two wheeler as a result of which, he fell down from the two wheeler and sustained grievous injuries all over his body. It is contended by the claimant that the rash and negligent driving of the driver of lorry bearing registration No. TCE-9897 was the cause of the accident and that since the 2nd respondent insured his vehicle with the appellant/insurance company, both of them are jointly and severally liable to pay compensation to him.

3. The owner of the lorry did not appear before the tribunal and therefore, he was set exparte. The National Insurance Company Limited, the present appellant contested the claim petition.

4. The tribunal, after analysing the evidence on record, awarded a compensation of Rs.1,49,300/- together with interest at the rate of 7.5% per annum to the claimant. Aggrieved over the orders passed by the tribunal, the appellant, National Insurance Company Limited has filed the present appeal under Section 173 of the Motor Vehicles Act.

5. Mr.D.Bhaskaran, learned counsel appearing for the appellant would contend that though the claim petition was filed under Section under Section 163-A of the Motor Vehicles Act, 1988, the tribunal converted the entire claim petition as one filed under Section 166 (1) of the Motor Vehicles Act. He would further contend that the driver of the lorry bearing registration No.TCE-9897 was driving the lorry at a moderate speed and that the first respondent/ claimant alone unmindful of vehicular Traffic drove his two wheeler and hit the lorry, which resulted in the accident. His specific contention is that, since the first respondent/claimant is a wrongdoer, he cannot maintain a claim petition under Section 163-A of the Motor Vehicles Act, 1988 and that the driver can be awarded only a sum of Rs.50,000/- as compensation under no fault liability, as prescribed in the Motor Vehicles Act.

6. Per contra, Mr.C.Thangaraj, learned counsel appearing for the first respondent/ claimant 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.

7. 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 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.

8. In the instant case, the contention of the learned counsel appearing for the appellant is that since the first respondent/claimant, rider of the two wheeler was negligent in riding his two wheeler, he cannot maintain a claim petition under Section 163-A of the Motor vehicles Act and that the tribunal was also wrong in framing an issue with regard to negligence.

9. 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.

10. In the instant case, the claimant/ first respondent 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 lorry bearing registration No.TCE-9897, belonging to the 2nd respondent herein. However, there can be no doubt as to the maintainability of the claim made by the claimant under the Motor Vehicles Act, even if he is a tort-feasor, after the introduction of Section 163-A of the Motor Vehicles Act.

11. As far as the quantum of compensation is concerned, the tribunal though by adopting multiplier method as per the Structured Formula as mentioned in the Second Schedule appended to the Act, awarded a sum of Rs.67,300/- towards "loss of earning capacity",. He has further awarded a sum of Rs.40,000/-, Rs.3,000/-, Rs.5,000/- and Rs.33,950/- towards "pain and sufferings", "transportation charges", "extra nourishment" and "medical expenses" respectively. As per the Second Schedule appended to the Act, apart from the loss of earning capacity, the first respondent/claimant is only entitled to a sum of Rs.5,000/- towards "pain and sufferings" and Rs.15,000/- towards "medical expenses". Thus, the first respondent/ claimant is entitled to a sum of Rs.87,300/- which is extracted hereunder.

Sl.No	Heads	Amounts in Rs.
1	Loss of earning capacity	67,300
2	Pain and sufferings	5,000
3	Medical Expenses	15,000
	Total	87,300

This amount shall carry interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit.

12. In the result,

i) The appeal is partly allowed. No costs. The connected miscellaneous petition is closed.

ii) The quantum of compensation awarded by the tribunal is scaled down to Rs.87,300/- from Rs.1,49,300/-.

iii) The appellant/ Insurance Company is directed to deposit the compensation of Rs.87,300/-, less the amount already deposited, within a period of four weeks from the date of claim petition till the date of deposit.

(iv) On such deposit being made by the appellant/Insurance company, the claimant is entitled to withdraw the same, after following due process of law.

v) The appellant/Insurance company is also at liberty to recover the excess amount withdrawn by the claimant over and above the award of Rs.87,300/- passed by this court.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

mst

To

1. The Motor Accident Claims Tribunal,
Fast Track Court,
Namakkal

Copy To: The Section Officer,
V.R.Section, High Court, Madras.

+3 cc's to Mr.C.Thangaraju, Advocate, Sr.No. 4713
+1 cc to Mr.D.Bhaskaran, Advocate, Sr.No. 4424

CMA.No.3487 of 2010 and
M.P.No.1 of 2010

MR(CO)
CSL/18.06.2019