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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.04.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.Nos.2185 and 2375 of 2015

C.M.A.No.2185 of 2015:

The United India Insurance Company Limited,
No.70, NSC Bose Road,
Chennai - 600 079.

.. Appellant

Vs.

1.V.M.Rajendran
2.E.Gopalan

.. Respondents

C.M.A.No.2375 of 2015:

V.M.Rajendran

.. Appellant

Vs.

1.E.Gopalan
2.The United India Insurance Company Limited,
No.70, NSC Bose Road,
Chennai - 600 079.

.. Respondents

Common Prayer: These Civil Miscellaneous Appeals are filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 03.09.2014 made in M.C.O.P.No.2265 of 2008 on the file of the Motor Accident Claims Tribunal, III Small Causes Court, Chennai.

C.M.A.No.2185 of 2015:

For Appellant	:	Mr.A.Dhiraviyanathan
For R1	:	Mr.F.Terry Chella Raja for M/s.M.Malar
For R2	:	Mr.V.G.Anbarasu

C.M.A.No.2375 of 2015:

For Appellant	:	Mr.F.Terry Chella Raja for M/s.M.Malar
For R1	:	Mr.V.G.Anbarasu
For R2	:	Mr.A.Dhiraviyanathan



C O M M O N J U D G M E N T

These Civil Miscellaneous Appeals have been filed against the award dated 03.09.2014 made in M.C.O.P.No.2265 of 2008 on the file of the Motor Accident Claims Tribunal, III Small Causes Court, Chennai.

2.Both the appeals arise out of the same award and hence they are disposed of by this common judgment. The parties are referred to as per their respective rank in the claim petition, for the sake of convenience.

3.The appellant in C.M.A.No.2185 of 2015 is the second respondent in M.C.O.P.No.2265 of 2008. The appellant in C.M.A.No.2375 of 2015 is the claimant in M.C.O.P.No.2265 of 2008. The claimant filed the above said claim petition claiming a sum of Rs.6,00,000/- as compensation for the injuries sustained by him in the accident that took place on 14.04.2008.

4.The Tribunal considering the pleadings, oral and documentary evidence held that the accident occurred only due to rash and negligent driving by the driver-cum-owner of the auto, the first respondent and directed the second respondent-Insurance Company as insurer of the auto to pay a sum of Rs.1,31,000/- as compensation to the claimant.

5.Against the said award dated 03.09.2014 made in M.C.O.P.No.2265 of 2008 granting compensation to the claimant, the second respondent-Insurance Company has come out with an appeal in C.M.A.No.2185 of 2015. Not being satisfied with the amount awarded by the Tribunal, the claimant has come out with an appeal in C.M.A.No.2375 of 2015, for enhancement of compensation.

6.The learned counsel appearing for the second respondent-Insurance Company contended that the Tribunal erred in awarding a sum of Rs.96,000/- for pecuniary loss, Rs.30,000/- towards loss of income and Rs.5,000/- towards pain and sufferings. The Tribunal failed to see that accident has occurred only due to rash and negligent riding by the claimant, who dashed on the backside of the auto belonging to the first respondent. F.I.R. was lodged only against the claimant. The claimant himself is a tort-feasor and he cannot claim any compensation against the second respondent-Insurance Company for his own fault. The claimant has mentioned in the claim petition that he was earning a sum of Rs.5,500/- per month, which exceeds Rs.40,000/- per annum and claim petition filed under Section 163 (A) of the Motor Vehicles Act, 1988 (herein after referred to as "the Act")



is not maintainable. The claimant has corrected his monthly income as Rs.3,300/-, without filing any application for amendment. Claim petition filed under Section 163 (A) of the Act is not maintainable, since ingredients of Section 163 (A) of the Act was not satisfied and hence, award passed by the Tribunal is liable to be set aside. The claimant has not made out any case for enhancement of compensation and prayed for setting aside the award passed by the Tribunal and dismissal of the appeal in C.M.A.No.2375 of 2015 filed by the claimant.

7.Per contra, the learned counsel appearing for the claimant contended that F.I.R. was lodged only by the first respondent, the driver-cum-owner of the auto. In the accident, the claimant sustained injuries and he was taken to hospital. Taking advantage of the same, the driver of the auto has lodged the complaint. In the complaint, the driver of the auto did not allege negligence on the part of the claimant. The claimant corrected his monthly income in the claim petition as Rs.3,300/-, even before the claim petition was numbered and therefore there is no necessity to file petition for amendment. The claimant has satisfied the ingredients of Section 163 (A) of the Act and the Tribunal has rightly entertained the said petition. In any event, the claimant has proved that accident has occurred only due to rash and negligent driving by the first respondent, driver of the auto. The claimant was aged 50 years and was working as a stone sculpture and was earning a sum of Rs.3,300/- per month. Due to the injuries and fracture, he underwent surgery. He examined Doctor as P.W.2, who deposed that the appellant suffered 60% disability. The Tribunal erroneously reduced the same to 15% and the amounts awarded by the Tribunal under different heads are meager and prayed for enhancement of compensation and for dismissal of the appeal filed by the second respondent-Insurance Company in C.M.A.No.2185 of 2015.

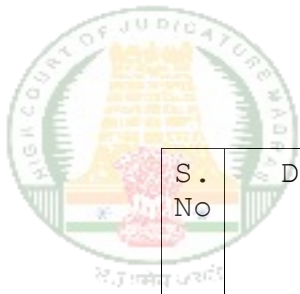
8.Heard the learned counsel appearing for the second respondent-Insurance Company as well as the learned counsel appearing for the claimant and perused the entire materials on record.

9.The contention of the learned counsel appearing for the second respondent-Insurance Company is that the claim petition filed under Section 163 (A) of the Act is not maintainable, as the claimant himself is a tort-feasor and his income at the time of accident was Rs.5,500/- per month. Both the contentions are without merits. It is now well settled that when the claim petition is filed under Section 163 (A) of the Act, the claimant need not plead and prove the negligence and claim petition is maintainable, even if the claimant or deceased was responsible for the accident. From the award of the Tribunal, it is seen that the first respondent, driver of the auto who was examined



as R.W.1 has deposed that a passenger wanted to get into the auto and so he went to the extreme left side of the road and stopped the auto. He has not deposed that he showed proper signal before going to the left side of the road. The Tribunal considering the evidence of P.W.1 and R.W.1 and the fact that the claimant who was coming behind the auto in his motorcycle dashed against the auto, when R.W.1 suddenly stopped the auto, fixed negligence on the part of the driver of the auto, even though the claimant need not plead and prove the negligence, when the claim petition was filed under Section 163 (A) of the Act. The only condition for maintaining the claim petition filed under Section 163 (A) of the Act is the income of the claimant or deceased must not exceed Rs.40,000/- per annum. The claimant has claimed that the monthly income is Rs.3,300/- in the claim petition. The second respondent-Insurance Company has not disproved the same by letting in any evidence. The Tribunal considering the contention of the claimant that his income is Rs.3,300/- and in the absence of any contra evidence, accepted the contention of the claimant and fixed annual income of the claimant at Rs.40,000/-. There is no error in the said reasoning of the Tribunal, warranting interference by this Court.

10.The Tribunal considering the evidence of P.W.2/Doctor and disability suffered by the claimant, fixed 15% disability for the whole body and applying the formula contained in II Schedule has awarded a sum of Rs.96,000/- towards pecuniary loss. P.W.2/Doctor assessed that claimant suffered 60% disability for a part of the body. In view of the same, 15% disability converted by the Tribunal to the whole body is not correct. The percentage of disability is fixed at 20% for the whole body of the claimant. The amount awarded by the Tribunal towards pecuniary loss is modified to Rs.1,28,000/- [Rs.40,000/- X 16 X 20/100]. The Tribunal has granted a sum of Rs.5,000/- towards pain and sufferings and the same is just compensation granted as per II Schedule. The Tribunal erroneously granted a sum of Rs.30,000/- towards loss of income, which is not contemplated in the II Schedule, when the claim petition is filed under Section 163 (A) of the Act and hence, the said amount is liable to be set aside and the same is hereby set aside. The compensation awarded by the Tribunal is modified as follows:



S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Pecuniary loss	96,000/-	1,28,000/-	enhanced
2.	Loss of income	30,000/-	-	set aside
3.	Pain and sufferings	5,000/-	5,000/-	confirmed
	Total	Rs.1,31,000/-	Rs.1,33,000/-	Enhanced by Rs.2,000/-

11. In the result, both the appeals are partly allowed. The compensation awarded by the Tribunal at Rs.1,31,000/- is hereby enhanced to Rs.1,33,000/-. The second respondent-Insurance Company is directed to deposit the enhanced award amount now determined by this Court, together with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P.No.2265 of 2008 on the file of the Motor Accident Claims Tribunal, III Small Causes Court, Chennai. On such deposit, the claimant is permitted to withdraw the enhanced award amount, along with interest and costs, less the amount if any, already withdrawn by making necessary applications before the Tribunal. The claimant is directed to pay the Court fee, if any for the enhanced award amount, now determined by this Court. No costs.

Sd/-
Asst.Registrar (CS VI)

/true copy/

Sub Asst. Registrar

To

1.The III Judge,
Motor Accidents Claims Tribunal,
Small Causes Court,
Chennai.

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



+1 cc to M/s.M.Malar Advocate sr40475

+1 cc to Mr.A.Dhiraviyananthan Advocate sr40558

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