

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 14.10.2019

Coram

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

C.M.A.No.2596 of 2013
and M.P.No.1 of 2013

The Branch Manager,
The Oriental Insurance Co.Ltd.,
No.81-C, First Floor,
K.R.C.Complex, Chennai Salai,
Krishnagiri - 635 001.

... Appellant/2nd Respondent
Vs.

1.Venkatesh @ Venkatappa ..1st Respondent/ Petitioner
2.P.Chandran ...2nd Respondent/ 1st respondent

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the judgement and decree made in M.C.O.P.No.110 of 2011 on the file of the Motor Accidents Claims Tribunal, Subordinate Court, Hosur, dated 12.09.2012.

For Appellant : Mr.M.B.Gopalan
For 1st Respondent : Mr.PA.Sudesh Kumar

J U D G M E N T

The appellant/Oriental Insurance Company Limited is the second respondent in M.C.O.P.No.110 of 2011 on the file of the Subordinate Judge, Motor Accidents Claims Tribunal, Hosur. The first respondent filed the claim petition under Section 163-A of the Motor Vehicles Act, seeking compensation of Rs.15,00,000/- for the injuries sustained by him in a road accident on 08.09.2010.

2. The case of the first respondent/claimant is that on 08.09.2010 he was driving a lorry bearing Registration No.TN25-9516 belonging to the second respondent and insured with the appellant, on Hosur-Kaganur road and at about 12.45 pm he lost his control over the vehicle and hit one Munusamy Reddy and thereafter a tree on the side of the road, as a result of which he sustained injuries. According to the claimant, since the owner of the lorry insured his vehicle with the appellant, both of them are jointly and severally liable to pay compensation to him.

3. After analysing the entire evidence on record, the Motor Accidents Claims Tribunal / Subordinate Judge, Hosur awarded compensation of Rs.4,78,000/- together with interest at the rate of 7.5.% per annum to the claimant. Aggrieved over the orders passed by the Tribunal, the appellant has filed the present appeal questioning their liability to pay compensation.

4. Mr.M.B.Gopalan, learned counsel appearing for the appellant would contend that the first respondent/claimant being a tort-feasor, cannot maintain a claim petition and therefore, the entire claim petition is liable to be dismissed. He would further contend that the Tribunal had awarded an exorbitant amount of Rs.4,78,000/- to the claimant without considering the nature of injuries sustained by him.

5. Per contra the learned counsel appearing for the first respondent/claimant would contend that the claim petition filed by the claimant under Section 163-A of Motor Vehicles Act is maintainable and that the Tribunal after considering the entire evidence on record, awarded compensation of Rs.4,78,000/-. He would further contend that the claimant could not pursue his profession as a driver on account of the accident.

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 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/ first respondent has filed the claim petition only under Section 163-A of the Motor Vehicles Act and 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.

9. Doctor Mr.D.V.Gandhi (P.W.7) had assessed the partial permanent disability of the claimant as 45% as far as the whole body is concerned and 55 % towards professional disability.

11. It is an admitted fact that the claimant was a driver by profession and he was aged 45 years on the date of the accident. In the claim petition, the monthly income of the claimant was indicated as Rs.3,300/- and the same is taken up for calculating the loss of earning capacity of the claimant. Since the claimant was aged 45 years on the date of the accident, prior multiplier in the instant case is 15 as per the structured formula

$$\begin{aligned} &= \text{Rs.}3,300 \times 12 \times 15 \times 45/100 \\ &= \text{Rs.}2,67,300/- \end{aligned}$$

Apart from that, he is entitled to a sum of Rs.5,000/- for pain and sufferings and Rs.15,000/- for medical expenses.

12. In the result,

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

(ii) The award amount passed by the Tribunal is scaled down to Rs.2,87,300/-, which shall carry interest at the rate of 7.5.% per annum.

(iii) It is represented by the learned counsel for the appellant that the entire award amount was already deposited. The appellant/ Insurance Company is at liberty to withdraw the amount already deposited by them over and above. The Insurance Company can recover the same from the owner of the vehicle, since the claimant did not drive the vehicle with a valid driving licence on the date of accident.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

To

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

2.The Section Officer,
V.R.Section,
High Court, Madras.

+1cc to Mr.M.B.Gopalan , Advocate SR.No. 26567

+1cc to Mr.PA.Sudesh Kumar , Advocate SR.No. 86145

C.M.A.No.2596 of 2013
and

M.P.No.1 of 2013

A.SK(15/07/2020)