IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.07.2019

CORAM

THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

C.M.A.No.150 of 2015
and
M.P.No.1 of 2015

The National Insurance Company Ltd.,
No.165, Nethaji Road,
Manjakuppam,
Cuddalore. ... Appellant/2nd Respondent

Vs.

1. R.Bharath ...1st Respondent/Petitioner
2. S.Asaithambi ...2nd Respondent/
1st Respondent

Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicle Act 1988, against the Judgment and Decree dated 12.02.2014 made in M.C.O.P.No.2544 of 2009 on the file of the Motor Accident Claims Tribunal (II Additional Sub-Ordinate Judge), Cuddalore.

For Appellant : Mr.S.Vadivel
For R1 : Mrs.Ramya Rao

R2 - Exparte

Judgment

This Civil Miscellaneous Appeal has been preferred by the Insurance Company against the award dated 12.02.2014 passed in M.C.O.P.No.2544 of 2009 by the Motor Accident Claims Tribunal (II Additional Sub-Ordinate Judge), Cuddalore.

2. The brief facts of the case is that on 28.10.2009 at about 10.00 p.m. while the first respondent was driving the second respondent's Motorcycle bearing Registration No.TN-31-BZ-0284 on the left side of the road at Seplanatham, a man suddenly crossed the road, as a result, the motorcycle capsized and caused the accident. Due to the impact, the first respondent sustained grievous injuries and multiple fractures all over his body and he become permanently disabled in spite of the treatment given. Since the second respondent is the owner and the appellant is the insurer of the vehicle, the first

respondent/claimant filed a Claim Petition against them before the Motor Accident Claims Tribunal (II Additional Sub-Ordinate Judge), Cuddalore, claiming a sum of Rs.5,00,000/- as compensation for the injuries and the expenditure made for the treatment.

3. Denying the mode of accident, the appellant insurance company has contended that the accident occurred only due to the rash and negligent driving of the claimant and there is no fault on the part of the owner of the vehicle. Further, at the time of accident, the claimant was not having any valid licence to drive the vehicle and therefore, he is not entitled to claim any compensation from the Insurance Company.

4. The Tribunal, considering the pleadings, oral and documentary evidence, allowed the petition in favour of the claimant and awarded a sum of Rs.1,93,909/- as compensation to the claimant under various heads. Aggrieved by the award, the appellant insurance company has preferred this appeal before this Court by submitting that the claimant had not marked any document to prove the injuries suffered by him and how long he had taken treatment, while so, the Tribunal ought not to have taken 30% disability for consideration and ought not to have awarded such huge amount as compensation.

5. On perusal of the award dated 12.02.2014 passed in M.C.O.P.No.2544 of 2009 by the Motor Accident Claims Tribunal (II Additional Sub-Ordinate Judge), Cuddalore, it is observed that the Tribunal has considered the fact from the evidence of R.W.1 that the accident occurred only due to the negligent driving of the claimant, and also considered the fact that the claimant himself has admitted his rashness and negligence and paid a sum of Rs.1,000/- as fine after admitting the offence before the District Munsif-cum-Judicial Magistrate's Court, Neyveli, so, when the claimant himself is a tort feasor, he cannot claim any compensation for the damages against by himself.

6. The learned counsel for the claimant has brought to the notice of this Court the Judgment of the Hon'ble Supreme Court of India, reported in the case of [Shivaji and Another Vs. Divisional Manager, United India Insurance Co. Ltd.] in Civil Appeal No.2816 of 2018, wherein, it has been held as follows:

> "3. The appellants filed a claim petition seeking compensation under Section 163A of the Motor Vehicles Act, 1988. The Tribunal noted that since the claim petition has been filed under Section 163A of the Act, the question of proving that the accident happened due to the rash and negligent act of the driver did not

arise. By its award dated 30 July 2011, the Tribunal allowed a claim of Rs.4,60,800/- together with interest at the rate 9% per annum.

4. The insurer preferred an appeal before the High Court of Karnataka. The appellants also filed an appeal before the High Court seeking enhancement of compensation awarded by the Tribunal. The High Court, by its impugned judgment, allowed the insurer's appeal and set aside the order of the Tribunal. The High Court opined that the idea behind enacting Section 163A is to ensure that even in the absence of any mistake on the part of the driver of the offending vehicle, the injured person or the legal heirs of the deceased person are compensated by the owner and the insurer. As a result, under this provision, since the victim has been contemplated to be an innocent third party, protection is extended only to the injured person or to the legal heirs of the deceased victim, and not to the driver who is responsible for causing the said accident. Since the deceased driver in this case was the tortfeasor and responsible for causing the accident, the High Court held that compensation could not have been awarded to the appellants.

5. The issue which arises before us is no longer res integra and is covered by a recent judgment of three judges of this Court in United India Insurance Co. Ltd. v. Sunil Kumar & Anr., wherein it was held that to permit a defence of negligence of the claimant by the insurer and/or to understand Section 163A of the Act as contemplating such a situation, would be inconsistent with the legislative object behind introduction of this provision, which is "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". The Court observed that if an insurer was permitted to raise a defence of negligence under Section 163A of the Act, it would "bring a proceeding under Section 163A 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". Consequently, it was held that in a proceeding under Section 163A of the Act, the insurer cannot raise any defence of negligence on the part of the victim to counter a claim for compensation.

6. Having regard to the above position, the Civil Appeal will have to be allowed."

7. In view of the above Judgment, it is clear that as per Section 163A of the Motor Vehicles Act, it is needless for the Court to prove whether the accident occurred due to the rash and negligent act of the driver. Considering the said fact, the Tribunal has allowed the petition and awarded the said compensation as the above provision is applicable to this case.

8. It is further observed that though it was stated by the appellant that the claimant was not earning Rs.3,300/- per month, there was no specific denial on the part of the appellant, and therefore, the Tribunal has approximately fixed the monthly income of the claimant at Rs.2,500/- per month, which is very much reasonable. It is also observed that the Tribunal only after considering the disability certificate issued by the doctor has fixed the disability of the claimant as 30%, and therefore, it cannot be modified. Since the age of the claimant was 27 years at the time of accident, the Tribunal has taken the appropriate multiplier 17 and awarded a sum of Rs.1,53,000/- (Rs.2,500 x 12 x 17 x 30%) as compensation towards Loss of earning power, it is very much reasonable. The sum of Rs.909/- awarded towards medical expenses is also found to be reasonable, and the sum of Rs.10,000/- awarded towards pain and sufferings is found meagre in view of the injuries suffered by the claimant, hence, enhanced to Rs.15,000/-. The sum awarded under all other heads i.e. Rs.10,000/- for future medical expenses, Rs.10,000/- for extra nourishment and Rs.10,000/- for transport expenses are found to be unreasonable and therefore the sum awarded under the said heads is set aside. Thus, the compensation awarded by the Tribunal is modified as follows:

S.No	Description	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)	Award confirmed or enhanced or removed
1.	Disability (2500 x 12 x 17 x 30/100)	1,53,000	1,53,000	Confirmed
2.	Medical Expenses	909	909	Confirmed
3.	Future Medical Expenses	10,000	-	Removed
4.	Pain and Sufferings	10,000	15,000	Enhanced
5.	Extra Nourishment	10,000	-	Removed

S.No	Description	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)	Award confirmed or enhanced or removed
6.	Transport & Incidental Expenses	10,000	-	Removed
	Total	1,93,909	1,68,909	Reduced by Rs.25,000/-

9. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.1,93,909/- is hereby reduced to Rs.1,68,909/-.

10. The appellant insurance company is directed to deposit the said amount as fixed by this Court with interest at the rate of 7.5% per annum from the date of petition till the date of realisation, less the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the claimant is permitted to withdraw the amount along with interest and cost, less the amount if any, already withdrawn. No costs. Consequently, connected miscellaneous petition is closed.

-s/d-
Assistant Registrar

True Copy
Sub-Assistant Registrar

raja
To

The Motor Accident Claims Tribunal
(II Additional Sub-Ordinate Judge), Cuddalore.

+1 cc to M/s.S.Vadivel advocate sr57388
+2 cc to M/s.A.N.viswanatha Rao Advocate sr57516

C.M.A.No.150 of 2015
and
M.P.No.1 of 2015

aa21/11/2019