IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.11.2019

CORAM:

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

CMA.No.3293 of 2013

National Insurance Co.Ltd.,
Divisional Office - I,
L.R.N.Building,
II Floor, Saradha College Road,
Salem 636 007.

...Appellant/3rd respondent

vs.

1.S.Baskar
2.Suresh
3.M/s.Project Concern International,
No.7, New Beach Road,
Kadambady, Nagapattinam - 611 001.

... Respondents/ Petitioner / Respondents2 &3

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and Judgment dated 06.02.2013 and made in M.C.O.P.No.652/2011 on the file of Court of the Motor Accident Claims Tribunal, Salem (In the Court of the I Additional Subordinate Judge, Salem).

For Appellant : Mr.S.Vadivel
For Respondents: Mr.L.Kulanthaivel for R1
No appearance for R2

J U D G M E N T

The appellant / National Insurance Company, the third respondent in MCOP.No.652 of 2011 on the file of the Motor Accident Claims Tribunal, I Additional Subordinate Judge, Salem has filed the present appeal. The claim petition was filed under Section 166 (1) of the Motor Vehicles Act, 1988 seeking compensation of Rs.2,00,000/- for the injuries sustained by the claimant in a road accident on 13.02.2011.

2. The case of the claimant in nutshell is as follows:

On 13.02.2011, the claimant was riding his Hero Honda Motor Cycle, bearing Registration No.TN 37 L 4752 along Bangalore Bye-pass road and at about 20.00 hours, a speeding Ambulance Van bearing Registration No. TN 51 D 0783 hit him from behind, as a result of which, he sustained injuries all over his body.

3. According to the claimant, the rash and negligent driving of the driver of the Ambulance Van belonging to the 3rd respondent, M/s.Project Concern International, was the cause of the accident and that since the said Ambulance van was insured with the present appellant, National Insurance Company Limited, the owner and the insurer of the Van are jointly and severally liable to pay compensation.

4. The I Additional Subordinate Judge, Salem while awarding a compensation of Rs.71,250/- together with interest at the rate of 7.5% per annum, directed also the owner of the vehicle and the appellant / National Insurance Company to pay the compensation to the claimant jointly and severally. Aggrieved over the orders passed by the Tribunal, the National Insurance Company has filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.

5. Mr.S.Vadivel, learned counsel appearing for the appellant contended that though notice was issued to the owner and the driver of Ambulance Van for production of driving licence, neither the owner nor the driver produced the driving licence. He therefore, contended that the Insurance Company cannot be held liable to pay compensation. He also contended that the rider of the two-wheeler (Claimant) was also rash and negligent.

6. Per Contra, Mr.C.Kulanthaivel, learned counsel appearing for the first respondent / claimant contended that since the present case is filed under Section 163 A of the Motor Vehicles Act, the Insurance Company cannot raise the defence of negligence.

In the decisions in:

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) it is held 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.

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.

8. 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 the 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.

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 does 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. It is pertinent to point out that the owner of the offending vehicle remained absent before the Tribunal and was set exparte. Though the Insurance Company had issued notice to the driver and the owner of the Ambulance Van for production of driving licence, they did not produce the same. Therefore adverse inference has to be drawn against them.

11. In the decisions in (i) Oriental Insurance Company Limited Vs. Nanjappan and others reported in 2004 (2) CTC 464, (ii) Shamanna vs. Divisional Manager, The Oriental Insurance Co. Ltd. in Civil Appeal No. 8144 of 2018, and (iii) Kempaiah and others Vs. S.S.Murthy and another reported in 2017 (1) TN MAC 737 (SC), the Hon'ble Supreme Court of India has held that if the driver of the offending vehicle does not possess a valid driving licence on the date of accident, the insurer must be directed to satisfy the award with a liberty to recover the same from the owner of the vehicle. In fact, the decision in National Insurance Company Limited Vs. Swarn Singh and others reported in (2004) 3 (SCC) 297 was followed in the decision in Kempaiah and others Vs. S.S.Murthy and another reported in 2017 (1) TN MAC 737 (SC).

12. In the facts and circumstances of the present case, the orders passed by the Tribunal directing the Insurance Company to pay the award amount is liable to be set aside.

Therefore, the National Insurance Company is directed to pay the award amount to the first respondent / claimant in the first instance and then recover the same from the owner of the offending vehicle.

13. As far as the quantum of compensation is concerned, no arguments were advanced by the learned counsel appearing for the appellant and no cross objection or appeal was filed by the claimant. A perusal of the award also shows that it is not on the higher side.

14. In the result,

(i) The Civil Miscellaneous Appeal partly allowed. No costs.

(ii) The quantum of compensation awarded by the Tribunal is upheld.

(iii) The appellant / Insurance Company is directed to deposit the entire compensation amount awarded by the Tribunal i.e., Rs.71,250/-/- (less the amount already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit to the credit of MCOP.No.652 of 2011 on the file of the Motor Accident Claims Tribunal, I Additional Subordinate Judge, Salem, within a period of four weeks from the date of receipt of a copy of this order and then recover the same from the owner of the Ambulance Van bearing Registration No. TN 51 D 0783 on the same cause of action.

(iv) On such deposit being made, the first respondent / claimant is at liberty to withdraw the same, after following due process of law.

s/d-
Assistant Registrar(CS VIII)

True Copy

Sub-Assistant Registrar

pns
To

1.The Motor Accidents Claims Tribunal,
The I Additional Subordinate Judge,
Salem.

Copy to:
The Section Officer, VR Section, High Court,Madras.

+1cc to Mr.S.Vadivel , Advocate SR.No. 93826
+1cc to Mr.C.Kulanthaivel , Advocate SR.No. 93690

CMA.No.3293 of 2013

A.SK(16/07/2020)