

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 06.09.2018

Delivered on : 29.01.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN
Civil Miscellaneous Appeal No.2181 of 2017 and
CMP.No.11535 of 2017 and
CMP.No.11342 of 2018

The Reliance General Insurance Company Ltd.,
Plot No.2054, 2nd Floor,
Raji's Towers, 2nd Avenue,
Anna Nagar, Chennai.

... Appellant

Vs

1.Ashokan
2.Mano

... Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the order dated 30.8.2016 passed in M.C.O.P.No.1162 of 2013 on the file of the Motor Accident Claims Tribunal (Special District and Sessions Court), Tiruvannamalai.

For Appellant : Mr.S.Arun Kumar

For Respondents: Mr.S.Santhan
for respondent No.1

R2 - Notice not ready

JUDGMENT

Aggrieved by the award of the Motor Accident Claims Tribunal (Special District and Sessions Court), Tiruvannamalai in M.C.O.P.No.1162 of 2013, dated 30.8.2016, the appellant - insurance company has preferred the Civil Miscellaneous Appeal.

2. Brief facts are that the first respondent was working as lorry driver under the second respondent and on 13.6.2013, he took soap load in the lorry bearing registration No.TN-25 J 0496 from Puducherry to Bangalore and was driving the lorry with due care and caution by observing the traffic rules. At about 18.30 hours, while he was nearing Kedar Village, Santhai thoppu, the diesel tank of the lorry driven by him had suddenly got fire and the tank busted out. Hence, the entire lorry got fired and the

first respondent stopped the lorry on the side of the road and jumped out of the lorry and sustained fracture of left leg below knee, fire injuries on left leg, right leg below knee, right foot, right hand back knee and injuries all over the body. Immediately, the first respondent was taken to the Government Villupuram Medical College Hospital, Mundiambakkam village and admitted as inpatient where he had taken for one month and thereafter, he was taking treatment as out-patient. Regarding the accident, a criminal case in Crime No.180 of 2013 was registered by Kedar Police Station. Stating that due to injuries sustained in the accident, he was not able to work as before, the first respondent filed the claim petition under Section 163-A of the Motor Vehicles Act, claiming compensation of Rs.5,00,000/-.

3. Denying the accident, the appellant has filed counter stating that it is duty of the first respondent to prove that the diesel tank of the lorry driven by the him suddenly got fire and due to that the first respondent sustained injuries all over the body. It is stated that the compensation claimed by the first respondent is excessive and prayed for dismissal of the claim petition.

4. Before the Tribunal, the first respondent examined himself as P.W.1 and Dr.Ravindran was examined as P.W.2. Exs.P1 to P9 were marked. No oral and documentary evidence was adduced on the side of the appellant.

5. Upon consideration of the oral and documentary evidence, the Tribunal held that the accident was happened as narrated by the first respondent and that the claim petition filed by the first respondent under Section 163-A of the Motor Vehicles Act is maintainable. Taking the monthly income of the deceased at Rs.2,500/- and adopting multiplier 17, the Tribunal awarded Rs.5,10,000/- towards loss of earning and adding conventional damages, the Tribunal awarded total compensation of Rs.5,21,150/- payable with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit.

6. Assailing the award, the learned counsel for the appellant submitted that the Tribunal failed to infer that unless the first respondent was negligent, the accident would not have occurred and the Tribunal also failed to note that in order to cover up his negligence the first respondent has alleged that he was constrained to jump out of the lorry. He would submit that the Tribunal erred in directing the appellant to pay compensation of Rs.5,21,150/- contrary to the procedures laid down under the Workman Compensation Act and also contrary to the judgment reported in 2011 ACJ 1.

7. Reiterating the findings of the Tribunal, the learned counsel for the respondents submitted that upon analysis of the oral and documentary evidence, the Tribunal entertained the claim petition filed by the first respondent/claimant under Section 163-A of the Act. As far as the quantum of compensation is concerned, the learned counsel for the first respondent submitted that due to injuries sustained in the accident, the first respondent was unable to perform his duty as driver and in fact, the compensation of Rs.5,21,150/- awarded by the Tribunal is inadequate and the same needs to be enhanced considerably.

8. I have heard Mr.S.Arun Kumar, learned counsel appearing for the appellant and Mr.S.Santhan, learned counsel for the 1st respondent and also perused the materials available on record.

9. The grievance of the appellant is that unless the first respondent was negligent, the accident would not have occurred and in order to cover up his negligence, he was constrained to jump out of the lorry. However, the Tribunal without considering the said plea, entertained the claim petition under Section 163-A of the Act. Therefore, the entire liability cannot be fastened on the appellant and more over, the Tribunal erred in awarding huge sum as compensation.

10. It is settled that in a claim under Section 163-A of the Act, the injured claimant need not plead or prove negligence. It is open to the owner or insurer to defend the claim by pleading and establishing that there had been negligence on the part of the injured claimant.

11. Admittedly, in the case on hand, nothing has been produced by the appellant to establish negligence on the part of the first respondent. The owner of the lorry i.e., respondent No.2 remained ex parte before the Tribunal and he had not objected the claim of the first respondent. Moreover, Ex.P1-FIR and Ex.P4-Motor Vehicle Inspector's report supports the case of first respondent, who was examined as P.W.1 before the Tribunal. The appellant has not even produced any piece of evidence to show that the accident occurred due to the negligence of the first respondent. Therefore, in the absence of any proof, the Tribunal was right in entertaining the claim petition filed by the first respondent under Section 163-A of the Act. This Court does not want to take a different view, as the finding of the Tribunal in respect of fastening the liability on the appellant is well considered and well reasoned.

12. As far as compensation awarded by the Tribunal is concerned, taking the monthly income of the first respondent at Rs.2,500/- and adopted multiplier "17", it had awarded

Rs.5,10,000/- towards loss of earning.

13. Admittedly, in the accident, the first respondent sustained fracture of left leg below the knee, injuries on right leg knee, right foot, right hand, right ear and also multiple injuries all over the body. Immediately, after the accident, the first respondent was admitted in Villupuram Government Medical College Hospital, where he was treated for the fracture sustained and also other injuries. Ex.P3 is the discharge summary and Ex.P2 is the accident register. On a perusal of Exs.P2 and P3, it is clear that injuries sustained by the first respondent in the accident are grievous in nature.

14. P.W.2-Dr.Ravindran examined the first respondent and issued Ex.P7-disability certificate assessing the disability. In fact, P.W.2 assessed 30% disability in respect of left leg below the knee and 20% in respect of right leg knee, totally 50% disability. The appellant has not produced any contra evidence to disprove the evidence of P.W.2 and Ex.P7-disability certificate.

15. In the present case, the first respondent was doing driver work and while driving the lorry, he had sustained injuries on his both legs. If a driver sustaining fracture and grievous injuries on both legs, it would be very difficult for him to perform his driver duty and there is every possibility of assumption that the first respondent was not able to perform his driver work as before. Thus, I am of the view that due to injuries sustained in the accident, there was total disablement of the first respondent and accordingly, the earning capacity of the first respondent was seriously affected.

16. The expression 'total disablement' has been defined in Section 2(1)(1) of the Employees' Compensation Act as under:
"2(1)(1) "total disablement" means such disablement whether of a temporary or permanent nature, as incapacitates workman for all work which he was capable of performing at the time of the accident resulting in such disablement."

17. At this juncture, it is relevant to refer to the decision of the Hon'ble Supreme Court in Pratab Narain Singh Deo v. Srinivas Sabata and another, reported in 1976 ACJ 141 (SC), wherein the Hon'ble Supreme Court held that the compensation is to be determined with loss of earning capacity and not loss of physical capacity and the said earning capacity is to be examined with reference to the nature of job the workman was doing at the time of the accident.

18. In the backdrop of the decision of the Hon'ble Supreme in Pratab Narain Singh Deo, supra, it has to be held that when a particular limb or member has become unfit for use to the nature of job or employment or work in which he was engaged at the time of accident, then he would be totally incapacitated to do the work. It is not the case of the appellant that still the first respondent-injured was working as driver and there was no total loss of earning capacity.

19. In the case on hand, the nature of injuries and the physical condition of the first respondent as evident from the materials on record clearly indicate that the first respondent's left leg has become unfit for use for driving a vehicle.

20. Though P.W.2-Doctor assessed the total disablement at 50%, his evidence would show that loss of earning capacity is total and permanent. As stated supra, in the absence of any contra evidence, it would lead to an irresistible conclusion that the loss of earning capacity is 100 per cent.

21. The learned counsel for the first respondent argued that the Tribunal erred in taking the monthly income of the first respondent at Rs.2,500/- and it ought to have taken the monthly income at Rs.8,000/-. He would submit that when the first respondent sustained injuries during the course of employment, the Tribunal ought to have fixed the monthly income at Rs.8,000/- multiplied by the relevant factor i.e., 201.66 as per Schedule I. Since the first respondent filed claim petition under Motor Vehicles Act, he cannot seek compensation under the provisions of Workmen's Compensation Act.

22. Qua monthly income claimed by the first respondent, the Tribunal held that he had failed to produce any proof to show that he was earning Rs.18,000/- per month. However, taking note of the fact that the first respondent was working as driver, the Tribunal fixed the monthly income of the first respondent at Rs.2,500/- per month.

23. In so far as the monthly income determined by the Tribunal is concerned, this Court is not able to countenance the monthly earning taken by the Tribunal. When the Tribunal entertained the claim petition under Section 163-A of the Act, it ought to have taken the annual income at Rs.40,000/-.

24. In Deepal Girishbhai Soni and others v. United India Insurance Co. Ltd. Baroda, reported in (2004) 5 SCC 385 and the decision of this Court in New India Assurance Co. Ltd., Motor Third Party Cell v. Er.K.Jothilingam and others, reported in

2009 (2) TN MAC 53 (DB), this Court as well as the Hon'ble Supreme Court held that if a person invokes provisions of Section 163-A, the annual income of Rs.40,000 per annum shall be treated as a cap.

25. In Deepal Girishbhai Soni and others v. United India Insurance Co. Ltd. Baroda, supra, the Hon'ble Supreme Court held as under:

"67. We, therefore, are of the opinion that Kodala has correctly been decided. However, we do not agree with the findings in Kodala that if a person invokes provisions of Section 163-A, the annual income of Rs.40,000 per annum shall be treated as a cap. In our opinion, the proceeding under Section 163-A being a social security provision, providing for a distinct scheme, only those whose annual income is up to Rs.40,000/- can take the benefit thereof. All other claims are required to be determined in terms of Chapter XII of the Act."

26. In New India Assurance Co. Ltd., Motor Third Party Cell v. Er.K.Jothilingam and others, supra, the Division Bench of this Court held that where the application is under Section 163-A of the Act, it is possible to calculate the compensation on the structured formula basis. In paragraph 17, it has been held as under:

"17. The Motor Vehicle Act, 1988 was amended by Act 54 of 1994, inter alia, inserting Section 163-A and the Second Schedule with effect from 14.11.1994. Section 163-A of the MV Act contains a special provision as to payment of compensation on structured formula basis, as indicated in the Second Schedule to the Act. It specifies the amount of compensation to be awarded with reference to the annual income range of Rs.3,000/- to Rs.40,000/-. It does not specify the quantum of compensation in case the annual income of the deceased is more than Rs.40,000/-. But it provides the multiplier to be applied with reference to the age of the deceased. The table starts with a multiplier of 15, goes up to 18, and then steadily comes down to 5. It also provides the standard deduction as one-third on account of Personal Living Expenses of the deceased. Therefore, where the Application is under Section 163-A of the Act, it is possible to calculate the compensation on the structured formula basis, even where

compensation is not specified with reference to the annual income of the deceased, or is more than Rs.40,000/- by applying for formula : $(2/3 \times AI \times M)$, that is two-thirds of the annual income multiplied by the multiplier applicable to the age of the deceased would be the compensation. Several principles of tortious liability are excluded when the claim is under Section 163-A of MV Act."

27. In the case on hand, the claim petition has been entertained under Section 163-A of the Act. Following the aforesaid decisions, this Court is inclined to take the annual income of the first respondent at Rs.40,000/-. Deducting one-third towards personal expenses, the loss of earning is calculated at Rs.26,667/- per annum.

28. Though in the claim petition the first respondent stated that he was aged 32 years, in Ex.P5-driving licence, the age was mentioned as 33 years. For the age group 31 - 35, the multiplier to be adopted is "16". The Tribunal erred in adopting multiplier "17". As stated supra since the first respondent was aged 33 years, the proper multiplier to be adopted is "16". Adopting multiplier "16", the loss of earning is calculated at Rs.4,26,672/- (Rs.26,667 x 16 = Rs.4,26,672/-).

29. The Tribunal awarded Rs.6,150/- towards medical expenses. To substantiate the same, the first respondent produced Ex.P6-medical bills. Since Rs.6,150/- awarded by the Tribunal is reasonable, the same is maintained.

30. The Tribunal awarded Rs.5,000/- towards pain and suffering. In fact, in the accident the first respondent sustained fracture of left leg below knee, fire injuries on left leg, right leg below knee and also multiple injuries all over the body. Considering the nature of injuries sustained by the first respondent in the accident, he would have suffered pain and suffering during the period of treatment. Further, he would have suffered mental and physical shock at the time of accident. The pain and suffering are hardships, which is intolerable and cannot be expressed in terms of words and money cannot compensate the same. Therefore, this Court feels that Rs.5,000/- awarded by the Tribunal towards pain and suffering is very low and it would be appropriate to award a sum of Rs.50,000/- towards pain and suffering. Accordingly, Rs.5,000/- awarded by the Tribunal under the head pain and suffering is enhanced to Rs.50,000/-.

31. There is no dispute that the first respondent had taken treatment for a period of one month as inpatient. The Tribunal

has not awarded any amount towards attender charges. When the first respondent had taken treatment as inpatient, during the said period, definitely, he would have been taken care of by the attender. Therefore, it would be appropriate to award a sum of Rs.10,000/- towards attender charges.

32. In the present case, the Tribunal has not awarded any amount towards future medical expenses. Considering the nature of injuries sustained by the first respondent, it would be appropriate to award a sum of Rs.20,000/- towards future medical expenses.

33. The Tribunal has not awarded any amount towards transport charges. According to the first respondent apart from taking treatment as inpatient for a period of one month, he had taken treatment as outpatient also. It was submitted that due to fracture sustained in the left leg, he was unable to walk for quite some time and while taking treatment as outpatient, the first respondent hired vehicle to go to the hospital and incurred transport charges. Considering the submission of the learned counsel for the first respondent, this Court is inclined to award a sum of Rs.9,000/- towards transport charges. Thus, the total compensation of Rs.5,21,150/- awarded by the Tribunal is modified as under:

Heads	Rs.
Loss of earning	4,26,672.00
Medical expenses	6,150.00
Pain and suffering	50,000.00
Attender charges	10,000.00
Future medical expenses	20,000.00
Transport charges	9,000.00
Total	5,21,822.00

Since the compensation of Rs.5,21,150/- awarded by the Tribunal is reasonable, the same is confirmed.

34. The Tribunal awarded interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and the same is maintained.

35. In the result, the Civil Miscellaneous Appeal is dismissed. The compensation of Rs.5,21,150/- awarded by the Tribunal in M.C.O.P.No.1162 of 2013 is confirmed, however with certain modification. The appellant insurance company is directed to deposit the compensation amount with interest at the rate of 7.5% per annum from the date of claim petition till the

date of deposit within a period of eight weeks from the date of receipt of a copy of this order, if not deposited. On such deposit, the first respondent is permitted to withdraw the entire amount along with accrued interest on filing proper application before the Tribunal. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

The Motor Accident Claims Tribunal,
Special District and Sessions Court,
Tiruvannamalai.

+1cc to Mr.S.Santhan, Advocate sr.8268
+1cc to Mr.S.Arun Kumar, Advocate sr.7783

Civil Miscellaneous Appeal No.2181 of 2017 and
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CMP.No.11342 of 2018

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