IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.01.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.3027 of 2018
and C.M.P.No.22967 of 2018

Oriental Insurance Company Limited,
256/115, Prakasam Road,
Broadway, Chennai. .. Appellant / 2nd Respondent

Vs.

1.Rajkumar .. 1st Respondent/Petitioner

2.Munusamy .. 2nd Respondent/1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and Decree dated 19.03.2018 made in M.C.O.P.No.147 of 2012 on the file of Motor Accidents Claims Tribunal, Sub Court, Kallakurichi, Villupuram District.

For Appellant : Ms.C.Harini for
M/s.N.Vijayaraghavan

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the award dated 19.03.2018 made in M.C.O.P.No.147 of 2012 on the file of Motor Accidents Claims Tribunal, Sub Court, Kallakurichi, Villupuram District.

2.The appellant is the second respondent in M.C.O.P.No.147 of 2012 on the file of Motor Accidents Claims Tribunal, Sub Court, Kallakurichi, Villupuram District. The first respondent filed the above said claim petition under Section 163 (A) of the Motor Vehicles Act, 1988, claiming a sum of Rs.3,00,000/- as compensation for the injuries sustained by him in the accident that took place on 30.01.2012.

3.The learned counsel appearing for the appellant contended that the accident occurred only due to rash and negligent driving by the first respondent and the F.I.R. and Charge Sheet was filed against the first respondent. The first respondent was neither a paid driver nor workmen of the second respondent and he is not covered under Section 147 of the Motor Vehicles Act, 1988, under Insurance Policy (Ex.R1). The Tribunal failed to consider the judgment of the Hon'ble Apex Court reported in (2009) 13 SCC 710; Ningamma Vs. United India Ins. Co., wherein it has been held that borrower of the vehicle steps into the shoes of owner of the vehicle and is not entitled to claim compensation against the insurer. The Tribunal without considering the judgment of the Hon'ble Apex Court in 2012 (2) SCC 356, National Insurance Company Ltd. Vs. Sinitha & Others, held that the appellant is liable to pay compensation as claim petition is filed under Section 163 (A) of the Motor Vehicles Act, when Hon'ble Apex Court held that it is open to the owner or Insurance Company to plead and establish fault on the part of the claimants or deceased to get themselves exonerated from the liability. In any event, the total compensation awarded by the Tribunal is excessive and has to be interfered with by this Court.

4.Heard the learned counsel appearing for the appellant and perused all the materials available on record.

5.From the materials on record, it is seen that the first respondent has filed the claim petition under Section 163 (A) of the Motor Vehicles Act. As per Section 163 (A) of the Motor Vehicles Act, the injured person or the legal heirs of the deceased need not prove the negligence on the part of the injured or deceased. This Section was inserted with a view to benefit the claimants by shortening the period of pendency of the claim petitions, so that the claimants do not suffer due to long pendency of the claim petition. In the judgments relied on by the learned counsel for the appellant, the Hon'ble Apex Court has held that the tort-feaser is not entitled to claim compensation from the Insurance Company as insured cannot be the claimant and also the receipient. The Insurance Company is liable to indemnify only the liability of insured. Subsequently, this issue was considered by the three Judges Bench of Hon'ble Apex Court in the judgment reported in 2017 (2) TN MAC 753 (SC) [United India Insurance Co. Ltd., Vs. Sunil Kumar and another], wherein it has been held in paragraphs 7, 8 and 9 as follows:

> "7.....Section 163-A, on the other hand, was introduced in the New Act for the first time to remedy the situation where determination of final Compensation on fault basis under Section 166 of the Act was progressively getting protracted. The Legislative intent and purpose was to provide for payment of final compensation to a class of Claimants (whose income was below Rs.40,000 per annum) on the basis of a

Structured Formula without any reference to fault liability. In fact, in Hansrajbhai Vs. Kodala (supra), the Bench had occasion to observe that:

"Compensation amount is paid without pleading or proof of fault, on the Principle of Social Justice as a Social security measure because of ever-increasing Motor Vehicle accidents in a fast-moving society. Further, the law before insertion of Section 163-A was giving limited benefit to the extent provided under Section 140 for no fault liability and determination of compensation amount on fault liability was taking a long time. That mischief is sought to be remedied by introducing Section 163-A and the disease of delay is sought to be cured to a large extent by affording benefit to the victims on Structured-Formula basis. Further, if the question of determining Compensation on fault liability is kept alive it would result in additional litigation and complications in case claimants fail to establish liability of the Owner of the defaulting vehicles."

8.From the above discussion, it is clear that grant of compensation under Section 163-A of the Act on the basis of the Structured Formula is in the nature of a Final Award and the adjudication thereunder is required to be made without any requirement of any proof of negligence of the Driver/Owner of the vehicle (s) involved in the accident. This is made explicit by Section 163-A(2). Though the aforesaid section of the Act does not specifically exclude a possible defence of the Insurer based on the negligence of the Claimant as contemplated by Section 140(4), to permit such defence to be introduced by the Insurer and/or to understand the provisions of Section 163-A of the Act to be contemplating any such situation would go contrary to the very legislative object behind introduction of Section 163-A of the Act, namely, 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. In fact, to understand Section 163-A of the Act to permit the Insurer to raise the defence of negligence would be to bring a proceeding under Section 163-A 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.

> 9.For the aforesaid reasons, we answer the question arising by holding that in a proceeding under Section 163-A of the Act it is not open for the Insurer to raise any defence of neligence on the part of the victim.”

6.This judgment was subsequently considered by another three Judges Bench of Hon'ble Apex Court in 2018 (2) TN MAC 149 (SC) [Shivaji and another Vs. Divisional Manager, United India Insurance Co. Ltd., and others], in paragraph 5 it has been held as follows:

> "...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.,1 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."

7.In view of the subsequent judgments of the Hon'ble Apex Court, the judgments relied on by the learned counsel for the appellant do not advance the case of the appellant. For the above reason, there is no error in finding by the Tribunal warranting interference by this Court.

8.As far as quantum of compensation is concerned, the Tribunal has considered the evidence of P.W.1, nature of injuries and all other relevant materials in proper perspective and has awarded compensation, which is not excessive. In the above circumstances, this Court is not inclined to interfere with the award passed by the Tribunal.

9.Accordingly, the award passed by the Tribunal is confirmed and the Civil Miscellaneous Appeal is dismissed. The appellant/Insurance Company is directed to deposit the award amount along 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. On such deposit, the first respondent/claimant is permitted to withdraw the award amount, less the amount if any, already withdrawn. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

krk

To

The Subordinate Judge,
Motor Accidents Claims Tribunal,
Kallakurichi,
Villupuram District.

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

+1 cc to Mr.N.Vijayaraghavan, Advocate, S.R.No.1597

C.M.A.No.3027 of 2018
and C.M.P.No.22967 of 2018

CA(CO)
SSM(28/03/2019).