IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.07.2020

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

C.M.A.No.2390 of 2010

(Through Video Conferencing)

Branch Manager,
The National Insurance Co. Ltd.,
Divisional Office - VIII,
No.S-7, Thiruvika Industrial Estate,
Guindy, Chennai. ... Appellant/2nd Respondent

Vs.

1.Beeman

2.K.Veerasamy ... Respondents/Petitioner/1st Respondent

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and Decree passed in M.C.O.P.No.425 of 2006 on 12.09.2008 on the file of the learned Motor Accident Claims Tribunal (Chief Judicial Magistrate - II, Judge), at Krishnagiri District.

For Appellant : Mr.J.Chandran

For Respondents: No appearance

*****

J U D G M E N T

The appellant Insurance Company is aggrieved by the impugned common Judgment and separate Decree dated 12.09.2008 passed by the Motor Accident Claims Tribunal (Chief Judicial Magistrate), Krishnagiri in M.C.O.P.No.425 of 2006.

2. By the impugned Common Judgment and separate Decrees, the Tribunal had allowed a part of the claims of the respective claimants which were the subject matter of C.M.A.Nos.2809, 3246, 3247 of 2010 & 3385 of 2014.

3. By an order dated 18.01.2019, this Court by placing reliance on the decision of the Division Bench of this Court in Bharathi Axa General Insurance Company Limited Vs. Anandi and others, reported in (2018) SCC OnLine Mad 13295, had allowed the appeals filed by the appellant Insurance Company

in respect of separate decrees which came to be passed by the Tribunal.

4. However, it is noticed that Section 140 of the Motor Vehicles Act, 1988, was not brought to attention of this Court when it passed the aforesaid order. Under Section 140 of the Act, the owner of the vehicle is bound to pay a maximum sum of of Rs.50,000/- in case of death and a sum of Rs.25,000- in case of permanent disability to any person due to accident arising out of use of motorcycle.

5. It makes it very clear that the claim for compensation under sub-Section (1) shall not be defeated by reason of any wrongful act, neglect or default of the person in respect of whose death or permanent disablement the claim has been made nor shall the quantum of compensation recoverable in respect of such death or permanent disablement be reduced on the basis of the share of such person in the responsibility for such death or permanent disablement.

6. The case of the appellant Insurance Company in the present Civil Miscellaneous Appeal is that the amount award to the 1st respondent for sum of Rs.9,500/- was excessive and that the accident occurred due to the rash and negligent driving of the driver of the 2nd respondent, which was insured with the appellant Insurance Company and therefore, the Tribunal ought to have reduced the compensation.

7. It is further submitted that the 1st respondent/claimant either pleaded that he travelled as a load man or an employees of the owner of the vehicle and therefore, the Tribunal ought to have held that the responsibility was only on the part of the 2nd respondent owner of the insured vehicle and not on the insurer since the 1st respondent / claimant had traveled as unauthorized person.

8. It is submitted that more than five persons had traveled in the Mini Door Auto and therefore, no liability can be fixed on the appellant Insurance Company. Before the Tribunal, the appellant Insurance Company had stated that the insured vehicle carrying fish along with occupants, as a result of the same, the driver lost his control and caused the accident and thus the occupants on the top of the goods fell and injured. However, no records to substantiate that 1st respondent/claimant traveled on the gratuitous passengers.

9. In United India Insurance Company Limited Vs. Sunil Kumar and Another, (2019) 12 SCC 398, the Hon'ble Supreme Court held that “compensation under Section 140of the Act was thus understood to be in the nature of an interim payment pending the final award under Section 166 of the Act. 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”.

10. The Hon'ble Supreme Court while considering Section 163-A(2), has held as follows:-

> 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 163A(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 163A of the Act to be contemplating any such situation would go contrary to the very legislative object behind introduction of Section 163A 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 163A of the Act to permit the Insurer to raise the defence of negligence would be to 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.
>
> 9. For the aforesaid reasons, we answer the question arising by holding that in a proceeding under Section 163A of the Act it is not open for the Insurer to raise any defence of negligence on the part of the victim.
>
> 10. The appeal will now be listed before regular Bench for disposal on merits, after the opinion of the larger Bench on the true scope and meaning of the provisions contained in

Section 170 of the Motor Vehicles Act, 1939 is rendered.

11. In view of Section 140 of the Motor Vehicles Act, 1988, I find no merits in this Civil Miscellaneous Appeal. Though this Court earlier had allowed some of the appeals of the Insurance Company, this Civil Miscellaneous Appeal is liable to be dismissed in view of the fact that the attention of this Court was earlier not brought to Section 140 of the Motor Vehicles Act, 1988.

12. If the amount of compensation has not been deposited by the appellant Insurance Company, it is directed to deposit the same together with interest at 75% per annum from the date of filing of the claim petition till the date of such deposit as directed by the Tribunal, less the amount already deposited if any, within a period of six weeks from the date of receipt of a copy of this Judgment.

13. This Civil Miscellaneous Appeal is dismissed accordingly. No costs.

Sd/-
Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

jen

To:

1.TheChief Judicial Magistrate - II,
The Motor Accident Claims Tribunal
Krishnagiri District.

2.The Section Officer,
VR Section, High Court,
Madras-104.

C.M.A.No.2390 of 2010

KK(CO)
CB(19/12/2020)