



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 10.12.2020

Pronounced on: 16.12.2020

WEB COPY

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THE HONOURABLE Dr. JUSTICE G.JAYACHANDRAN

C.M.A.No.1626 of 2016

The Oriental Insurance Company Limited,
Subagovindhm Building, Imperial Road,
Cuddalore - 2. ... Appellant/2nd Respondent

/versus/

1. A.Ahamed Rafi, ...1st Respondent/ Petitioner
2. S.Anbzhagan, ...2nd Respondent /1st Respondent

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicle Act, against the judgment and decree in M.C.O.P.No.2825 of 2013, dated 18.01.2016 on the file of the Motor Accidents Claims Tribunal, I Additional District Court, Cuddalore.

For Appellant : Ms.Harini,
for Mr.N.Vijayaraghavan.

For R1 : Mrs.Ramya Rao,
for Mr.A.N.Viswanatha Rao

For R2 : exparte

JUDGMENT

(The case has been heard through video conference)

This Appeal is filed by the Insurance Company alleging that the award passed by the Tribunal is erroneous since the claimant is the tortfeasor.

2. The facts of the case is that on 16.06.2013 at about 8.30 p.m., when the claimant was riding his motorcycle bearing registration No.PY-01-BM-9402 on Cuddalore to Chidambaram main road near Melpoovanikuppam bus stop, the vehicle bearing registration No.TN-31-AW-8820 coming from opposite direction rash and negligently dashed against the claimant and caused grievous injury. The claimant sustained multiple fracture and admitted in the private hospital Cuddalore. Taking advantage of his hospitalisation, FIR has been filed against the claimant as



if he has committed the accident. Claim petition under Section 163-A of Motor vehicle Act, was filed seeking Rs.10,00,000/- as compensation.

3. In the counter filed by the Insurance Company, it is stated that the claimant is a Tortfeasor and even under Section 163-A of Motor Vehicle Act, the tortfeasor cannot be the claimant. Further, the quantum of compensation sought in the claim petition also questioned as excessive and exorbitant.

4. The Tribunal, after considering the evidence and provisions under Section 163-A of Motor Vehicle held that though the claimant has accepted his guilt and paid fine before the Criminal Court, he alone is not cause for the accident. The other motor vehicle has also contributed for the accident and therefore, when application is filed under no faulty liability clause, the Insurance Company cannot be exonerated from its liability. Taking note of the fact that the claimant has sustained fracture on his right thigh and two fingers, the Tribunal has assessed disability at 40% and has awarded a sum of Rs.3,11,660/-.

5. In the appeal, the Learned Counsel for the Insurance Company contended that the claim petition ought not to have been entertained in view of the fact that the claimant being the tortfeasor and he has admitted his guilt and had paid fine before the judicial Magistrate without any contest. Further, in the petition filed under Section 163(A) of Motor Vehicle Act, compensation ought not to have been awarded since the injury sustained by the claimants is not a schedule injury and his disability is not a total disability. The Tribunal, without adhering to the quantum prescribed under the Schedule - II of the Motor Vehicle Act, while assessing compensation under Section 163 (A) of the Motor Vehicle Act, has erroneously awarded exorbitant compensation.

6. The Learned Counsel for the claimant would submit that when two vehicles are involved in the accident though the claimant has pleaded guilty and paid fine before the judicial Magistrate, he cannot be treated sole as the Tortfeasor in the accident. The Tribunal has independently assessed the evidence and has held the claimant is entitled for due compensation. As far as the quantum of compensation, the Tribunal has taken note of medical expense and disability and has awarded fair and adequate compensation which need not be interfered.

7. The claim petition is filed under Section 163(A) of Motor Vehicle Act. The claimant is relieved of burden to prove negligence when he filed petition under Section 163(A) of Motor Vehicle Act but if the negligence is on the part of the claimant alone, he cannot take umbrage under Section 163(A) of Motor Vehicle Act being the claimant as well as the Tortfeasor. In



this case, since another motor vehicle has also involved and accident has occurred due to head on collision of two vehicles. Negligence cannot be solely fixed on the claimant. Therefore, the petition under Section 163(A) of Motor Vehicle Act is maintainable and claimant is entitled for compensation. At the same time, the said compensation should be within the parameters prescribed under the statute and schedule - II of the Motor Vehicle Act, 1988.

8. The Doctor who examined the victim has assessed 55% disability for his fracture on the right thigh and right hand finger. The Tribunal has fixed 40% permanent partial disability for the said injury. For the general damages, in case of injuries and disabilities under schedule - II, the claimant is entitled only for Rs.5,000/- for pain and sufferings and maximum Rs.15,000/- for medical expenses. The injury sustained by the claimant is not schedule injury. Therefore, multiplier cannot be applied.

9. In the light of the facts and circumstances of the case, this Court is of the view that the award paid in excess contrary to the schedule has to be modified. Accordingly, the award of the Tribunal is modified as below:-

Sl.Nos.	Compensation under various heads	Award passed by this Court
1.	Disability (40 x Rs.3,000/-)	Rs.1,20,000/-
2.	Pain and sufferings	Rs.5,000/-
3.	Medical expenses	Rs.15,000/-
	Total	Rs.1,40,000/-

10. The award of the Tribunal is modified and scaled down from Rs.3,11,660/- to Rs.1,40,000/-. The Insurance Company is directed to deposit the amount in the M.C.O.P. account with 7.5% from the date of filing the petition till the date of realization. The learned counsel appearing for the Insurance Company states that the entire award amount with interest already deposited in the MCOP account. If so, the claimant is permitted to withdraw the award amount as modified by this Court in Civil Miscellaneous Appeal. The balance amount shall be withdrawn by the Insurance Company on proper application. Accordingly, the Civil Miscellaneous Appeal is partly allowed. No costs.

-s/d-

Assistant Registrar(CS-IV)

True Copy

Sub-Assistant Registrar

bsm



To:-

1.The Motor Accidents Claims Tribunal, I Additional District Court, Cuddalore.

2.The Section Officer,
V.R.Section, High Court, Madras.

C.M.A.No.1626 of 2016

CA(CO)
A.SK(07.09.2021)