

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.10.2020

CORAM

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

C.M.A.No.201 of 2015

and

M.P.No.1 of 2015

National Insurance Company Limited,  
LRN Colony, Sarada College Main Road,  
Hasthampatty, Salem-7. ....2<sup>nd</sup> Respondent/Appellant

/versus/

1.K.Krishnan .... Petitioner/Respondents  
2.K.Arumugam .... 1<sup>st</sup> Respondent/Respondent

Prayer: This Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act against the Judgement and Decree dated 09.06.2014 made in M.C.O.P.No.438 of 2009 on the file of the Motor Accident Claims Tribunal/Special Sub Judge No.1, Salem.

For Appellant : Mr.Arun Kumar

For Respondents: Mr.K.Thiruvengadam for R1  
R2-Ex-parte

J U D G M E N T

(The case has been heard through video conference)

Heard the learned counsel for the appellant and the first respondent.

2. The appeal is filed by the Insurance Company on the point that the Tribunal award to compensate the claimant under Section 163(A) is not sustainable, in the light of the provisions of the Motor Vehicles Act as well as the judgement of the Supreme Court. While riding two wheeler on Ettiyampatty to Veerappanaickenpatty road, in front of Chockalingam's land, a TVS 50 came from the opposite direction and dashed against the two wheeler and the claimant fell down from the Motor cycle. He sustained fracture injury in his right knee, lacerated injury in

his fore head and lacerated injury in his nose, upper lip and right hip. A claim petition under Section 163 A was filed without advertent negligence.

3. The petition was contested by the Insurance Company on the ground that the injury sustained by the claimant are only simple in nature and the accident occurred due to the negligence of the claimant. Hence, the claimant is not entitled for any compensation. The Tribunal, on considering the facts and taking note of the expenses incurred by the victim, had awarded a sum of Rs.1,56,000/-.

4. Aggrieved by the award, the Insurance Company has filed this appeal. The learned counsel for the appellant would submit that the injured/claimant is the borrower of the two-wheeler from the insured and he has entered into the shoes of the owner. Though in the Insurance policy, premium of PA Cover have been collected, the claimant is not entitled for any compensation under 163A which is meant for victim, whose annual income is lesser than Rs.40,000/- and the claimant should have either died in the accident or sustained total permanent disability. In this case, the claimant had sustained injuries, namely; i) fracture injury in his right knee, ii) lacerated injury in his fore head iii) lacerated injury in his nose, upper lip and right hip. None of these injuries has caused total permanent disability to the claimant. Therefore, the award passed by the Tribunal is contrary to law. Further, in support of his contention, the learned counsel for the Insurance Company referred the recent Judgement of this Court rendered in United India Insurance Company Vs. Rani & others, dated 12.03.2020, by his Lordship S.M.Subramaniam.

5. The learned counsel appearing for the claimant/first respondent would submit that the Insurance Company had collected premium for third party as well as the personal accident of the owner. Therefore, either way, they are liable to compensate the injured. Pointing out Rs.85,000/- medical expenses incurred by the claimant/first respondent, the learned counsel would submit that the claimant is entitled for compensation.

6. This Court, on considering the law and the facts of the case, is of the opinion that the provisions of the Act is very clear and compensation can be awarded under 163A, on certain conditions. One such condition is that, the claimant ought to have sustained total permanent disability or death. In this case, the injuries sustained by the claimant do not fall under category of total disability. Hence, the contention of the appellant counsel is upheld, the appeal is allowed and the Tribunal award is set aside. No order as to costs.

7. In the light of the above, the appellant herein is permitted to withdraw the amount, if any, lying in the deposit of M.C.O.P.No.438 of 2009 on the file of the Motor Accident Claims Tribunal, Special Sub Judge No.1, Salem.

Sd/-  
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

kmm  
To

The Motor Accident Claims Tribunal,  
Special Sub Judge No.1, Salem.

Copy to

The Section Officer,  
VR Section, High Court of Madras.

+1cc to M/s.S.Arunkumar, Advdocate Sr.34167

C.M.A.No.201 of 2015  
and  
M.P.No.1 of 2015

rp[col  
srg 04/05/2021

सत्यमेव जयते

WEB COPY