IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.03.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.NO.1759 OF 2020
AND
C.M.P.NO.12906 OF 2020

The Manager,
M/s.Bharti AXA General Insurance Company Limited,
2nd Floor, No.965, Avinashi Road,
Coimbatore. .. Appellant/ 2nd Respondent

Vs.

1.G.Murugesan ... 1st Respondent/Petitioner

2.Lakshmipathy .. 2nd Respondent/1st Respondent

Prayer:

This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 05.09.2019 made in M.C.O.P.No.1039 of 2014 on the file of the Motor Accidents Claims Tribunal, Special Sub Court, Dharmapuri.

For Appellant : Mr.S.Arunkumar

For R1 : Mr.M.Selvam

J U D G M E N T

The matter is heard through “Video Conferencing/Hybrid mode”.

2.This Civil Miscellaneous Appeal has been filed to set aside the award dated 05.09.2019 made in M.C.O.P.No.1039 of 2014 on the file of the Motor Accidents Claims Tribunal, Special Sub Court, Dharmapuri.

3.The appellant is the 2nd respondent in M.C.O.P.No.1039 of 2014 on the file of the Motor Accidents Claims Tribunal, Special Sub Court, Dharmapuri. The 1st respondent filed the said claim petition under Section 163(A) of the Motor Vehicles Act, claiming a sum of Rs.20,00,000/- as compensation for the injuries sustained by him in the accident that took place on 29.09.2012.

4.According to 1st respondent, on 29.09.2012 at about 07.00 P.M., while he was proceeding in the Bajaj Pulsar motorcycle bearing Registration No.TN 24 P 3876 owned by 2nd respondent on the Kaveripattinam to Kakkangarai Main Road near Cambridge School, a dog suddenly crossed the road. On seeing this, the 1st respondent applied sudden brake to avoid the accident. But due to the wet condition of the road, the tyre of the motorcycle skipped and due to the same, the 1st respondent fell down from the motorcycle and sustained grievous injuries all over his body. Immediately after the accident, the 1st respondent was taken to Government Hospital, Krishangiri and then he was taken to Sparsh Hospital, Bangalore and has taken treatment as inpatient from 30.09.2012 to 26.10.2012 and underwent surgery on 18.10.2012. Thereafter, also the 1st respondent has taken treatment in various Private Hospitals and has taken treatment till filing of the claim petition. Therefore, the 1st respondent filed the said claim petition under Section 163(A) of the Motor Vehicles Act, claiming a sum of Rs.20,00,000/- as compensation against the 2nd respondent and appellant-Insurance Company, being the owner and insurer of the motorcycle respectively.

5.The 2nd respondent-owner of the motorcycle remained exparte before the Tribunal.

6.The appellant-Insurance Company filed counter statement and denied all the averments made by the 1st respondent. The appellant denied the manner of accident as alleged by the 1st respondent. According to appellant, the accident has occurred only due to the negligence on the part of the 1st respondent and the F.I.R. was lodged only after a delay of three days for the purpose of claiming compensation. F.I.R. is also lodged against the 1st respondent. The rider of the motorcycle was not possessing valid driving license at the time of accident. The motorcycle owned by 2nd respondent was not used for his purpose at the time of accident and the 1st respondent has falsely stated that the motorcycle was used as per the instructions of the 2nd respondent at the time of accident. The 2nd respondent's motorcycle was not insured with the appellant at the time of accident. Even if the 2nd respondent's motorcycle was insured with the appellant and the 1st respondent proves that at the time of accident, the motorcycle was used with the permission of the 2nd respondent, the appellant is not liable to indemnify the owner as the owner of the motorcycle has violated the statutory provisions and also the 1st respondent is not a third party. The allegations made by the 1st respondent are not satisfying the requirements of the provisions as contemplated in Section 163(A) of the Motor Vehicles Act and thus, the claim petition is not maintainable. The 1st respondent is not a third party and he is the tort feasor. A tort feasor cannot make a claim for his own fault and moreover the annual income of the 1st respondent is more than Rs.40,000/- per annum. Hence, the claim petition is not maintainable under Section 163(A) of the Motor Vehicles Act and the claim petition is liable to be dismissed. The appellant denied the age, avocation, income, alleged injuries, period of treatment taken and the medical expenses incurred by the 1st respondent. In any event, the quantum of compensation claimed by the 1st respondent is excessive and prayed for dismissal of the claim petition.

7.Before the Tribunal, the 1st respondent examined himself as P.W.1 and 10 documents were marked as Exs.P1 to P10. The appellant-Insurance Company examined one Durai as R.W.1 and marked the copy of the Insurance Policy as Ex.R1.

8.The Tribunal considering the pleadings, oral and documentary evidence held that the 1st respondent suffered injuries in the accident and directed the appellant to pay a sum of Rs.6,86,500/- as compensation to the 1st respondent.

9.To set aside the said award dated 05.09.2019 made in M.C.O.P.No.1039 of 2014, the appellant has come out with the present appeal.

10.The learned counsel appearing for the appellant contended that the accident has occurred only due to the negligence on the part of the 1st respondent and he is a tort feasor and hence, he cannot maintain the claim petition under Section 163(A) of the Motor Vehicles Act. The Tribunal failed to appreciate the fact that the 1st respondent sustained injuries due to his own fault. The Tribunal erred in invoking Section 163(A) despite the 1st respondent has declared that his annual income is Rs.2,64,000/-. The Tribunal failed to appreciate that 1st respondent is neither statutorily nor contractually covered under the Policy. The award of the Tribunal is unsustainable in view of the judgments reported in 2009 ACJ 998 [New India Assurance Company Limited Vs. Sadanand Mukhi & others], 2020 (1) TN MAC 1 (SC) [Ramkhiladi and another Vs. United India Insurance Co. Ltd., and another] & CDJ 2020 MHC 1056 [M/s.National Insurance Company Limited, Puducherry Vs. Rani & others] and prayed for setting aside the award of the Tribunal.

11.Per contra, the learned counsel appearing for the 1st respondent contended that at the instructions of 2nd respondent, the 1st respondent used the vehicle of the 2nd respondent to get medicines for 2nd respondent. Due to the sudden crossing of the dog, the accident occurred. The accident did not occur due to negligence of the 1st respondent. The 1st respondent filed the claim petition under Section 163(A) of the Motor Vehicles Act and he need not plead and prove the negligence. The Tribunal rightly awarded compensation under different heads, which are not excessive and prayed for dismissal of the appeal.

12.Heard the learned learned counsel appearing for the appellant as well as the learned counsel appearing for the 1st respondent and perused the entire materials on record.

13.It is the case of the 1st respondent that while he was riding the motorcycle, a dog suddenly crossed the road and due to the same, the 1st respondent skipped, dragged, fell down and sustained injuries. The 1st respondent examined himself as P.W.1 and deposed as that of the averments made in the claim petition and marked F.I.R. On the other hand, it is the case of the appellant that 1st respondent is a tort feasor and accident occurred only due to his own negligence. The 1st respondent declared his annual income as Rs.2,64,000/- and hence, he cannot maintain the claim petition under Section 163 (A) of the Motor Vehicles Act. The appellant examined their official as R.W.1 and marked the Insurance Policy as Ex.R1. It is the specific case of the 1st respondent that when he applied brake to avoid hitting the dog, he fell down and suffered injuries. Except the motorcycle in which the 1st respondent was driving, no other vehicle was involved. The accident has occurred only due to the negligence on the part of the 1st respondent.

14.The issue whether the driver of the vehicle, who borrowed the vehicle from the owner was responsible for the accident and the tort-feasor can claim compensation from the owner and insurer of the said vehicle was considered by the Hon'ble Apex Court in the judgment reported in 2009 (2) TNMAC 169 (SC) [Ningamma & another v. United India Insurance Co. Ltd.]. In the said judgment, the Hon'ble Apex Court has held that a borrower of the vehicle steps into the shoes of the owner and the tort-feasor or his legal representatives are not entitled to claim compensation against the insurer of the vehicle. When the accident has occurred due to his own negligence, the injured person or his legal representatives are not entitled to maintain the claim petition against the owner and insurer of the vehicle. In the present case, the vehicle driven by the 1st respondent is Bajaj Pulsar motorcycle owned by 2nd respondent and the 1st respondent steps into the shoes of the owner of the vehicle. As per the judgment of the Hon'ble Apex Court reported in 2009 (2) TNMAC 169 (SC), cited supra, the 1st respondent is not entitled to maintain the claim petition under Section 163(A) of the Motor Vehicles Act.

15.When the claim petition is filed under Section 166 of the

Motor Vehicles Act, the claimant has to prove the negligence on the part of the driver and owner of the offending vehicle. Due to the same, the claim petitions were disposed after lapse of considerable time. Mean while, the injured claimant or legal representatives of deceased are put to irreparable hardship due to the said delay. When the deceased was sole bread winner, the hardship caused to the legal heirs is very severe. For speedy disposal of claim petitions filed by the claimants, Section 163-A of the Act was inserted by Act 54 of 1994 with effect from 14.11.1994. The said section reads as follows:

> "163-A. Special provisions as to payment of compensation on structured- formula basis. -
>
> (1) Notwithstanding anything contained in this Act or in any other law for the time being in force or instrument having the force of law, the owner of the motor vehicle or the authorised insurer shall be liable to pay in the case of death or permanent disablement due to accident arising out of the use of motor vehicle, compensation, as indicated in the Second Schedule, to the legal heirs or the victim, as the case may be.
>
> Explanation. – For the purposes of this sub-section, "permanent disability" shall have the same meaning and extent as in the Workmen's Compensation Act, 1923.
>
> (2) In any claim for compensation under sub-section (1), the claimant shall not be required to plead or establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act or neglect or default of the owner of the vehicle or vehicles concerned or of any other person.
>
> (3) The Central Government may, keeping in view the cost of living by notification in the Official Gazette, from time to time amend the Second Schedule."

15(a).Only persons who are earning not more than Rs.40,000/- per annum can maintain the claim petition under Section 163(A) of the Motor Vehicles Act. The said issue was again considered by the Hon'ble Apex Court and this Court in the judgments reported in 2013 (1) TN MAC 481 (SC) [Reshmakumari & Others Vs. Madan Mohan and another] and 2020 (1) TNMAC 646, [Divisional Manager, Oriental Insurance Company Limited, Vellore Vs.

R.Damodharan and another] respectively.

16.In the present case, the 1st respondent contended that he was working as Trade Men in TNSTC, Dharmapuri and was earning a sum of Rs.22,000/- per month. He failed to prove his avocation and income. In the absence of any material evidence with regard to avocation and income, the Tribunal fixed a sum of Rs.6,500/- per month as notional income of the 1st respondent, which works out to Rs.78,000/- per annum which exceeds the annual salary fixed in the II Schedule of Section 163(A). Further when claim petition is filed under Section 163(A) of the Motor Vehicles Act, the claimants are entitled to compensation only as per structural formula. In the present case, the Tribunal without following the structural formula, granted excess amounts under different heads as compensation. In view of the judgment of the Hon'ble Apex Court referred to above, the Tribunal committed irregularity and illegality by directing the appellant to pay the compensation which warrants interference by this Court. In view of the same, the award of the Tribunal is liable to be set aside and it is hereby set aside.

17.In the result, this Civil Miscellaneous Appeal is allowed by setting aside the award passed by the Tribunal. The appellant-Insurance Company is permitted to withdraw the award amount, if any lying in the deposit to the credit of M.C.O.P.No.1039 of 2014, if the award amount has already been deposited by them. Consequently, the connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To
1. The Special Subordinate Judge,
   Motor Accidents Claims Tribunal,
   Dharmapuri.

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

+1cc to Mr.S.Arunkumar, Advocate, S.R.No.17474
+1cc to Mr.M.Selvam, Advocate, S.R.No.18412

C.M.A.No.1759 of 2020

VBM(CO)
CS/21/10/2021