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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.02.2021

CORAM:

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

C.M.A.No.1802 of 2017

The National Insurance Company Ltd.,  
122/165, Netaji Road,  
Manjakuppam, Cuddalore,  
Tamilnadu 607 001.

...Appellant/2<sup>nd</sup> Respondent

Vs

1.Manimaran  
2.Veeramani

..1<sup>st</sup> Respondent/Claimant

...2<sup>nd</sup> Respondent/1<sup>st</sup> Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 01.09.2016 made in M.C.O.P.No.22 of 2014 on the file of the Motor Accidents Claims Tribunal, Subordinate Court, Neyveli.

For Appellant : Mr.S.Vadivel  
For Respondents : Mr.M.Selvam for R1  
R2 not ready notice

#### J U D G M E N T

Heard the learned counsel for the appellant and first respondent. The Insurance Company is the appellant herein.

2. The appeal is filed by the Insurance Company being aggrieved by the award passed by the Tribunal.

3.The short point canvassed in the appeal against the award passed by the Tribunal is that when the claim petition filed under Section 140 of the Motor Vehicles Act under no fault liability clause, the Tribunal has awarded Rs.65,500/- contrary to the provisions of the Act. Hence, pointing the legal error in the award, the present appeal is filed.

4.The brief facts of the case is that on 16.01.2013 at about 4 p.m.,while the claimant was riding his two wheeler along Cuddalore to Vridhachalam main road near Jayapriya Theatre, Tata Indica car proceeding from the opposite direction hit the claimant's two wheeler and caused the accident. Due to the said



accident, the claimant sustained multiple fracture and was taken to the Government Hospital, Cuddalore. After first aid, he was shifted to a private hospital and got treatment for his injuries. At the time of accident, the claimant was 36 years old working as Contract labour in NLC limited, Neyveli and was earning Rs.9,000/- per month. Due to the accident, he has lost his income and unable to maintain himself. Hence, claim petition was filed for Rs.5,00,000/- against the owner of the Tata Motor car bearing Registration No.TN 31 AZ 8552 and the Insurance Company.

5.The Insurance company filed its counter stating that the first respondent drove the car carefully and it was the claimant coming in the opposite direction on the wrong side. On seeing him, the car driver applied brake and stopped but the claimant dashed against the halted car and sustained injury. The police registered F.I.R. against the claimant and after enquiry, he was charged for the offence under Sections 279 and 337 I.P.C. Therefore, the Insurance Company is not liable to pay any compensation to the claimant, who is at fault.

6.Before the Tribunal, the claimant subjected himself for examination as P.W.1 and the doctor who gave disability certificate was examined as P.W.2. 7 exhibits were marked on his behalf. On behalf of the respondent, two witnesses viz., the Assistant in the second respondent Insurance Corporation and the Inspector of Police, who investigated the motor accident were examined as R.W.1 and R.W.2. 5 Exhibits were marked particularly the fine receipt Ex.X5 which indicates that the claimant has paid fine, was relied by the Insurance Company to show that the accident occurred due to the fault of the claimant and he is entitled for compensation only as per Section 140 and not under Section 166. However, the Tribunal considering the injuries sustained by the claimant awarded a sum of Rs.35,000/- for the injuries and another Rs.30,500/- under the other non conventional head.

7.The question of law raised in the appeal is whether in the claim petition filed under Section 140 of the Motor Vehicles Act and proved to be an accident due to the negligence of the claimant, the Tribunal can pass an award over and above the statutory liability.

8.Section 140 of the Motor Vehicles Act reads as below:

"140. Liability to pay compensation in certain cases on the principle of no fault. -

(1) Where death or permanent disablement of any person has resulted from an accident arising out of the use of a motor vehicle or motor vehicles, the owner of the vehicles shall, or, as the case may be,



the owners of the vehicles shall, jointly and severally, be liable to pay compensation in respect of such death or disablement in accordance with the provisions of this section.

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(2) The amount of compensation which shall be payable under subsection (1) in respect of the death of any person shall be a fixed sum of [fifty thousand rupees] and the amount of compensation payable under that sub-section in respect of the permanent disablement of any person shall be a fixed sum of [twenty - five thousand rupees].

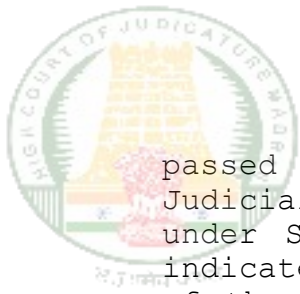
(3) In any claim for compensation under subsection (1), the claimant shall not be required to plead and establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act, neglect or default of the owner or owners of the vehicle or vehicles concerned or of any other person.

(4) A 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.

(5) Notwithstanding anything contained in subsection (2) regarding death or bodily injury to any person, for which the owner of the vehicle is liable to give compensation for relief, he is also liable to pay compensation under any other law for the time being in force :

Provided that the amount of such compensation to be given under any other law shall be reduced from the amount of compensation payable under this section or under section 163 - A]."

9. The F.I.R. which is marked as Ex.P1 indicates that the accident occurred due to the driver of the negligence of the two wheeler rider Manimaran who is the claimant. He has dashed against the Tata Indica Car while riding his two wheeler on the wrong side of the road. Ex.X5 is the fine receipt which reveals that the claimant has pleaded guilty in S.T.C.No.257 of 2013 and paid a fine of Rs.800/- on 15.05.2013. Ex.X3 is the order



passed in S.T.C.No.257 of 2013 by the District Munsif cum Judicial Magistrate at Neyveli. When the claim petition filed under Section 140 of the Motor Vehicles Act and evidence also indicates that the accident has occurred only due to the fault of the claimant, the Tribunal cannot award over and above what prescribed under the statute. Therefore, the award of the Tribunal is liable to be modified.

10. Accordingly, the Tribunal award is modified and a sum of Rs.25,000/- only is awarded as compensation with 7.5% interest from the date of filing the petition till the date of realisation.

11. Learned counsel appearing for the appellant submits that the entire award amount has been deposited in the CMA account. If so, the respondent claimant is permitted to withdraw the award amount with interest and the balance amount is permitted to be withdrawn by the appellant herein on appropriate petition.

12. In the result, the Civil Miscellaneous Appeal is partly allowed. No order as to costs.

s/d-  
Assistant Registrar (CS-IX)

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Sub-Assistant Registrar

vri

To  
1. Motor Accidents Claims Tribunal,  
Subordinate Court,  
Neyveli.

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

+1 CC to Mr. M. Selvam, Advocate sr 12366  
+1 CC to Mr. S. Vadivel, Advocate sr 12015

CMA NO.1802 OF 2017

RSV (CO)  
SP (20/09/2021)