



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATE ON WHICH RESERVED : 17.12.2020

DATE ON WHICH PRONOUNCED : 11.01.2021

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CORAM:

THE HON'BLE MR. JUSTICE G.ILANGO VAN

C.M.A. (MD) .No.1686 of 2010
in
MP(MD)No. 2 of 2010

The Branch Manager,
The United India Insurance Co.Ltd.,
P.P.K Building, Main Road,
Marthandam,Vilavangodu Taluk,
Kanyakumari District.

:Appellant / Respondent

Vs.

K.Srikandan @ Rajan

: Respondent/Petitioner

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the award and exorder dated 23.03.2010 passed in MCOP.No.56 of 2009, on the file of the Motor Accidents Claims Tribunal (Special Court) Nagercoil.

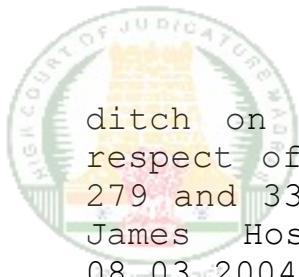
For Appellant : Mr.I.Robert Chandrakumar
for Mr.G.Prabhu Rajadurai

For Respondent : Mr.E.V.N.Siva

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the judgment and decree, dated 23.03.2010 passed in MCOP.No.56 of 2009 on the file of the Motor Accidents Claims Tribunal (Special Court) Nagercoil.

2.The case of the claimant before the Tribunal is that on 17.02.2004, at about 01.00 p.m, the petitioner was riding his two wheeler bearing Registration No.TN-X-9545 with a pillion rider from the V.K.P School to Lekshmipuram Chanel Road. When they were nearing the place of occurrence, the two wheeler was driven by its driver in a high speed and to avoid the hitting, the petitioner turned the two wheeler, as a result of which, they fell into a



ditch on the road side. So, he suffered grievous injuries. In respect of offence, a case in Crime No.67 of 2004 under Sections 279 and 337 of IPC was registered against him. He was admitted in James Hospital, Cholachal as inpatient from 17.02.2004 to 08.03.2004 and thereafter, he was taking treatment as outpatient.

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3.The accident took place, not because of his rash and negligent driving. Claiming a compensation of Rs.1,50,000/- from his insurer, he has filed a claim petition under Section 163A of Motor Vehicles Act.

4.The case of the appellant before the Tribunal is that the accident is disputed. The coverage was not in force, at the time of the accident. The petition also suffers from non-jointer of necessary party, he did not suffer any permanent disability, did not own proper driving license and resisted the claim.

5.The Tribunal on going through the evidence both oral and documentary, came to the conclusion that the accident took place as mentioned in the petition and assessed the compensation at **Rs.61,733/-** (Rupees Sixty One Thousand Seven Hundred and Thirty Three Only) and directed the Insurance Company to pay the same with 7.5% interest per annum. So, challenging the award, the appellant has approached this Court.

6.The appeal can be disposed on the short point on the ground that this is the personal accident coverage case, in which, the claimant himself drove the vehicle and sustained injury due to fall in a ditch, in an attempt to avoid hitting the vehicle, which was coming in the opposite direction. So, the question of default liability does not arise and the petitioner has not impleaded the vehicle, which was coming in the opposite direction, since there was no hit. More over, the petition was filed under Section 163A of Motor Vehicles Act. The respondent by relying upon the judgment of Hon'ble Supreme Court in **Ramkhiladi and another Vs United India Insurance Company and another** reported in **(2020) 2 SCC 550**, submitted that the claim is very well maintainable. Though the argument was advanced by the appellant, to the effect that the petitioner being the tortfeasor and no other vehicle is involved in the occurrence, the claim under Section 163A and 147 of Motor Vehicles Act, will not arise and if at all, the petitioner can claim the compensation only from the Insurance Company as per the Personal Accident Coverage Policy conditions by submitting a claim form.

7.Now, the question arises for consideration is that **whether the insured person can maintain a petition under Section 163A, as against his own insurer under the Personal Accident Coverage, before the Tribunal.**

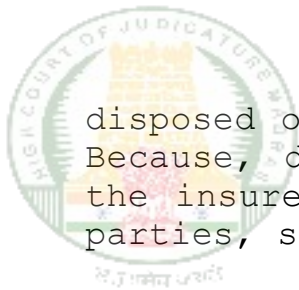


8. In the judgment reported in **Ramkhiladi and another Vs United India Insurance Company and another** (cited supra), a similar problem arose. The Hon'ble Supreme Court has pointed out that when a claim petition is filed under Section 163A of Motor Vehicles Act, it is not necessary that the fault or negligence must be proved and established. At the same time, an observation was made that even if the petition under Section 163A is filed, the driver, the owner and the insurer of the offending vehicle must be added as parties. In that case, a person, borrowed a two wheeler from the owner and he met with an accident, due to the rash and negligent driving on the part of the another motor vehicle. But, without adding the offending vehicle, the owner and the insurer, the petitioner/ claimant filed a claim petition before the Tribunal under Section 163A of Motor Vehicles Act.

9. The question, which arose, before the Hon'ble Supreme Court is that when an application filed under Section 163A of Motor Vehicles Act, whether any need to plead or establish the negligence and neglect or default of the owner of the vehicle.

10. An argument was advanced to the effect that the insured can select either one of the two courses, which are available to him. They can file a petition under Section 163A or under section 166 r/w 140 of Motor Vehicles Act. But that was rejected holding that claim application under Section 163A of Motor Vehicles Act, can be filed, only when a third party is involved. Because, the borrower has stepped into the shoes of the owner of the vehicle and as such, the owner cannot maintain the petition against himself. In the concluding para, the Hon'ble Supreme Court has observed that the parties shall be governed by the terms and conditions of the contract of insurance and as such, in case of Personal Accident, the owner or driver is entitled to Rs.1 lakh. Since the deceased has stepped into the shoes of the owner, the benefit of compensation of Rs.1 lakh, can be extended to him. The request made by the claimant counsel to award a sum of Rs.5 lakhs, as per the amendment 2nd schedule, was rejected on the ground that, the accident took place, prior to the amendment of the 2nd schedule. So, the petition is not maintainable in a Motor Accident Tribunal.

11. But, during the argument, the respondent would submit that as per the insurance policy, Personal Accident Coverage Premium has also been paid and the liability is mentioned at Rs.1 lakh. So, according to him, he is entitled to claim compensation for the injuries suffered by him, on the basis of the Personal Accident Coverage. The Hon'ble Supreme Court has disposed of the case, on the basis of the terms of the contract between the insured and the insurer. So, I find that this case also can be



disposed of on the short point on the Personal Accident Coverage. Because, driving the respondent to present claim petition before the insurer at the length of time, may not be in the interest of parties, since 10 years lapsed.

12.Ex.P.5/Wound Certificate was produced to show the nature of injury suffered by him. There was hematoma over fore-head and the alinear abrasion over the right hip joint measuring 3 x 3 c.m. The first injury was found to be grievous in nature. On CT Scan, it was found that a haemorrhage contusion on the left parietal region was found. So, it is seen that the head injury was grievous in nature. He was admitted in the Hospital upto 08.03.2004. Ex.P.7/Hospital Bill, would prove this. Further, it is noted that he was admitted on 17.02.2004 and discharged on 08.03.2004. The total medical expenses is noted as Rs.35,912/-. Ex.P.6 is the medicine purchase bills, which comes to Rs.12,321.40 paise. The Loss of Income, during the period of inpatient, was fixed at Rs.6,000/-.

13. But, when calculating the compensation for injuries under Personal Accident Coverage, the loss of income, cannot be taken into account. So, also Extra Nourishment and Damages to Clothing are not admissible.

14. In the absence of any disability, he is entitled only for pain and suffering for the grievous injury. Even though, the Tribunal has fixed the same at Rs.5,000/-, considering the duration of the treatment and the fracture on the parital region, thought it to award **Rs.10,000/-** for the grievous injury suffered by him and the same is added with medical expenses (Ex.P.6 & Ex.P.7) **Rs.48,233/-** (Rs.35,912/- + Rs.12,321.40 paise). So, the total compensation for the injuries suffered by him under the Personal Accident Coverage can be worked out at **Rs.58,233/-**. To this extent, the compensation passed by the Tribunal requires modification.

15. In the result the Civil Miscellaneous Appeal is partly allowed and the award passed by the Tribunal is reduced from Rs.61,733/- (Rupees Sixty One Thousand Seven Hundred and Thirty Three Only) to Rs.58,233/- (Rupees Fifty Eight Thousand Two Hundred and Thirty Three Only). There is no order as to costs. Consequently, connected miscellaneous petition is closed. Since it is decided that the petition is not maintainable under Section 163 of Motor Vehicle Act, no interest is payable to the respondent.

16. The appellant /Insurance Company is directed to deposit the aforesaid amount within a period of two months from the date of receipt of a copy of this judgment, less the amount already deposited, if any. On such deposit, the Tribunal is directed to



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transfer the award amount to the accounts of the respondent by way of RTGS, within a period of three weeks thereafter.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar (CS)

dss

Note:

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.

To

The Special Judge,
Motor Accidents Claims Tribunal
(Special Court)
Nagercoil.

Copy to

The Record Keeper-2 copies
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to Mr.G.PRABHU RAJADURAI, Advocate (SR-922[F] dated 18/01/2021)

Judgment made in
C.M.A. (MD) .No.1686 of 2010
in
MP (MD) No. 2 of 2010
11.01.2021

KM (24.02.2021) 5P 5C