IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 23.03.2023

Coram:

THE HONOURABLE MRS.JUSTICE N.MALA

C.M.A.No.715 of 2023
and
C.M.P.No.6280 of 2023

M/s.TATA AIG General
Insurance Company Limited,
'Peninsula Business Park',
Tower A, XV Floor,
Ganapatrao Kadam Marg,
Off Senapati Bapat Marg,
Lower Parel,
Mumbai- 400 013.

Coimbatore Office,
At 'May flower Towers'
I floor,
No.72, Balasundaram Road,
Coimbatore- 641 018.

... Appellant

Vs.

1.J.J.Mithun
2.Noor Mohammed
3.N.Mohammed Basrudinn

... Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988 praying to set aside the Final Award passed in M.C.O.P.No.1429 of 2017 dated 22.09.2022, on the file of the Motor Accidents Claims Tribunal, (Special Subordinate Court), Coimbatore.

For Appellant : Mr.J.Michael Visuvasam

JUDGMENT

The appeal is filed by the appellant/Insurance Company challenging the award of the Tribunal dated 22.09.2022 passed in M.C.O.P.No.1429 of 2017 on the file of the Motor Accidents Claims Tribunal, (Special Subordinate Court), Coimbatore.

2.The short point raised by the learned counsel for the appellant is as to whether the Tribunal is justified in awarding the sum of Rs.25,000/- along with interest and costs under the principle of "No fault liability " as a final relief.

3.The learned counsel for the appellant submitted that the relief under Section 140 of the Motor Vehicles Act was an interim relief and the same could not be granted as a final relief at the time of disposal of the claim petition. No other point is agitated before this Court. The accident is not disputed, so also the finding of the Tribunal that the negligence of the claimant resulted in the accident. The Tribunal therefore dismissed the claim petition under Section 166 of the Motor Vehicles Act and held that the claimant was entitled to a sum of Rs.25,000/- under Section 140 of the Motor Vehicles Act.

4. There are two Judgments of the Hon'ble Supreme Court directly on the point. In the Judgment reported in *2011 CDJ 894(SC)* in the case of ***A.Shridar Vs. United India Insurance Co. Ltd.*** the Hon'ble Supreme Court held as follows:-

"7.We have heard the learned counsel for the parties and perused the record. From the evidence on record, the Tribunal holds that the appellant, while driving the motor vehicle on the fateful day, met with an accident not because of the fault of the owner of the vehicle or because of the fault of the other vehicle, but because of the oil spill on the road. Therefore, the negligence can be attributable only on the person who was driving the vehicle and hence, is not entitled to compensation under the Insurance Policy. Therefore, the High Court was justified in invoking the beneficial legislation and in directing the Insurance Company to pay limited amount by way of compensation to the injured person of an accident arising out of the use of a motor cycle on the basis of "no fault liability," since the accident has arisen out of motor vehicle and has resulted in grievous injuries to the claimant.

8. In view of the above, we do not see any legal infirmity in the Judgment and Order passed by the High Court. The appeal is, accordingly, dismissed. Costs are made easy."

5. So also, the Hon'ble Supreme Court in the case of ***Eshwarappa and another V. C.S.Gurushanthappa and another*** reported in ***2010 ACJ 2444,*** held as follows:-

"17.The provisions of section 140 are indeed intended to provide immediate succour to the injured or the heirs and legal representatives of the deceased. Hence, normally a claim under section 140 is made at the threshold of the proceeding and the payment of compensation under section 140 is directed to be made by an interim award of Claims Tribunal which may be adjusted if

in the final award the claimants are held entitled to any larger amounts. But that does not mean, that in case a claim under section 140 was not made at the beginning of the proceedings due to the ignorance of the claimant or no direction to make payment of the compensation under section 140 was issued due to the oversight of the Tribunal, the door would be permanently closed. Such a view would be contrary to the legal provisions and would be opposed to the public policy."

In the light of the above Judgments of the Hon'ble Supreme Court, I am of the view that there are no merits in the appeal filed by the appellant/Insurance Company and the same is dismissed. The Final Award dated 22.09.2022, passed in M.C.O.P. No.1429 of 2017, by the Motor Accidents Claims Tribunal, (Special Subordinate Court), Coimbatore is hereby confirmed. Consequently connected CMP is closed. There shall be no order as to costs.

23.03.2023

dsn
Speaking Order:Yes/No
Index:Yes/No

N.MALA.J.,

dsn

C.M.A.No.715 of 2023

23.03.2023