



CMA.No.1141 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.11.2023

CORAM: JUSTICE N.SESHASAYEE

CMA.Nos.1141 of 2022

Durgaram

... Appellant

-Vs-

1.Arjunan
2.The Oriental Insurance Co. Ltd.,
Gandhi Road, Kallakurichi.
3.G.Murugan
4.ICICI Lombard General Insurance Co.Ltd.,
No.140, Chotbhai Centre, 3rd Floor,
Nungambakkam High Road,
Numgambakkam, Chennai – 600 034.

...Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the M.V.Act, 1988, against the Judgment and Decree dated 21.01.2020 passed in MCOP.No.247 of 2017, on the file of the Motor Accident Claims Tribunal (III Additional District Court), Villupuram @ Kallakurichi.

For Appellant : Mr.K.Suryanarayanan

For R1 and R3 : No appearance

For R2 : Mr.P.Kandasamy

For R4 : Mr.M.Jayaraj



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JUDGMENT

In an accident involving two 2-wheelers, that took place on 13.12.2016, the appellant herein, who is a rider of one of the two wheeler had suffered injuries. He preferred a claim under Section 163A of the Motor Vehicles Act against the owners of the two vehicles involved as well as their respective insurance company. The owners of both the vehicles remained ex-parte but, the respective insurance company of these vehicles, which are arrayed as second and fourth respondents contested the matter.

2.Certain additional facts may now be stated;

- After the accident, FIR was registered against the appellant on the allegation that it was he who rode his motorcycle negligently.
- The second respondent/insurance company of the motor cycle which belong to the first respondent and driven by the appellant at the time of accident, took up a plea that the appellant as the tortfeasor is not entitled to claim compensation.
- So far as the fourth respondent is concerned, the fourth respondent had



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taken up a plea that the rider of the offending two wheeler did not possess an valid license and hence, it must be absolved.

- The Tribunal had allowed the claim petition but, has fastened the liability only on the first respondent, the owner of the very motorcycle, which the appellant rode.

3.The Tribunal's approach is as below;

- a) Since the appellant is a tortfeasor, the second respondent/insurance company cannot be made liable;
- b) Even though the appellant claims that he was earning Rs.3,300/- a month, in his cross-examination he had stated that his monthly income was about Rs.8,000/-. Since the annual income at that rate exceeds the upper cap of Rs.40,000/- per month under Section 163A of the MV Act, the appellant is ineligible to invoke Section 163A.
- c) So far as the fourth respondent is concerned, which is the insurer of the other two wheeler is concerned, since the rider of this two wheeler did not possess a valid license, no liability can be fastened against the company.



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4. Heard, the learned counsel appearing for the appellant and the respondents 2 and 4. So far as the fourth respondent is concerned, no claim is made against it. The contest is essentially between the appellant and the second respondent.

5. The principle reason why the claimant lost his claim petition before the Tribunal is that his annual income was more than Rs.40,000/- and which the Tribunal had occasion to find based on the oral testimony of the appellant before it and secondly, he is ineligible to invoke Section 163A of the Motor Vehicles Act. However, after ***United India Insurance Company Ltd., Vs. Sunil Kumar and another*** [(2019) 12 SCC 398] case, the law on the subject has underwent legislative change, as a result of which, Section 163A of the Motor Vehicles Act is now dropped and is replaced by Section 164. Under the amended Section 164, irrespective of the income and the negligence of the claimant, the court can grant fixed compensation of Rs.2,50,000/- in case of grievous injury suffered by the claimant.

6. The Hon'ble Delhi High Court in the case of ***Iffco Tokio General Insurance Co. Ltd. v. Uma Devi and Ors.*** [2023 SCC Online Del 3131], has held that the



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Courts in India are empowered, under Section 164, to grant compensation of Rs. 2,50,000/- in the case of grievous injury suffered by the claimant if the matter is to be adjudicated after the passing of the Amendment Act notwithstanding the fact that the accident itself had taken place before the amendment.

7. In terms of Ext.C.1, the certificate issued by the Medical Board, the appellant had suffered fractures to his right leg, dislocation of his left radius and other injuries. Apparently, the injuries are grievous in nature and as a consequence, in terms of Section 164 of the Motor Vehicles Act, the appellant would be entitled to a flat Rs.2,50,000/-.

8. Accordingly, the Civil Miscellaneous Appeal is partly allowed and the first and second respondents are jointly and severally liable to pay the appellant a sum of Rs.2,50,000/- (Rupees Two Lakhs and Fifty Thousand only) and they are required to deposit the same before the Tribunal within a period of six (6) weeks from the date of receipt of a copy of this order. On such deposit, the appellant is permitted to withdraw the same. No costs.

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N.SESHASAYEE, J.,

Tsg

To

- 1.The Motor Accident Claims Tribunal
(III Additional District Court),
Villupuram @ Kallakurichi.
- 2.The Section Officer,
V.R.Section, High Court, Madras.

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