IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.07.2023

CORAM:

THE HONOURABLE Mrs.JUSTICE R.KALAIMATHI

C.M.A.No.2749 of 2014

E.Erine Victor Vaz ... Appellant

vs.

1.B.Vijayalakshmi

2. The New India Assurance Co., Ltd.
No.45, Moore Street, Parrys,
Chennai – 600 001 ... Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, to set aside the Judgment and decree passed by the Motor Accidents Claims Tribunal/V Small Causes Court, Chennai, in M.C.O.P. No.2422 of 2012 on 25.06.2014

For Appellant : Mr.Udhayakumar

For Respondent : Mr.J.Chandran for R2
R1- Dismissed vide Court order dated 13.02.2002

JUDGMENT

This Civil Miscellaneous Appeal is preferred by the appellant/ claimant assailing the Judgment and Decree passed by the Motor Accident Claims Tribunal (V Small Causes Court) Chennai, in M.C.O.P. No.2422 of 2012 on 25.06.2014.

2. The claim petition was filed by the appellant/claimant under Section 163A of the Motor Vehicles Act, 1988 (in short, the Act) and Rule 3 of Motor Accidents Claims Tribunal Rules, claiming a compensation of Rs.2,00,000/- for the injuries sustained by him in a road accident that took place on 23.03.2012.

3. The Tribunal, after the hearing arguments on both sides and upon perusing the oral and documentary evidence, has chosen to dismiss the claim petition under the impugned judgment and decree, holding that in a claim under Section 163A of Act, there should be a specific averment in the petition to the effect that the annual income of the claimant does not exceed Rs.40,000/-.

4. Mr.Udhayakumar, the learned counsel for the appellant/claimant would strenuously contend that the Tribunal has dismissed the claim petition holding that the appellant/claimant did not suffer any disability of permanent nature. He would also contend that towards the head 'pain and sufferings' under no fault liability, an amount of Rs.25,000/- may be granted.

5. To buttress his argument, the following judgment of this Court was referred to;

> In the case of **Iffco-Tokio General Insurance Co. Ltd. Vs. S.Elangovan [reported in 2018 (2) TNMAC 441]** wherein, it has been held that in Section 163A of the Act, the expression “notwithstanding anything contained in this Act or in any other law for the time being in force” has been used, which would go to show that the Parliament intended to insert a non obstante clause of wide nature and it would mean that the provisions of Section 163A of the Act would apply despite the contrary provisions existing in the said Act or any other law for the time being in force.

6. Per contra, Mr.J.Chandran, learned counsel appearing for the 2nd respondent/Insurance company would vehemently argue that the Tribunal, having gone through the entire records and found that the appellant/claimant would not be entitled to get compensation under Section 163A of the Act, rightly dismissed the claim petition, which is in order and hence, the said findings of the Tribunal needs no interference.

7. The prime question that arisen in this appeal is as to whether the application under Section 163A of the Act, has to be limited for the victims, whose annual income is below Rs.40,000/- and those victims whose income is above Rs.40,000/- per annum are required to go for claim under Section 166 of the Act.

8. Of course, Section 163A of the Act is provided for the lesser income people with an instant relief. This Court is of the opinion that if the above said contention of the learned counsel for the second respondent is accepted, then it may hit Article 14 of the Constitution of India. A claimant need not be with low income upto Rs.40,000/- per annum. Persons, at times, with higher income also need to be equally compensated if they lose their bread winner or sustain injuries on account of road accident. A person having monthly income of Rs.3,333/- alone is qualified to claim

compensation under Section 163A of the Act would not be the intention of the Parliament.

9. Section 163A of the Act creates new liability to the owners of the vehicle. The ultimate purpose of introducing the above said Section is to enhance for the purpose of introducing Section 140 of the 1988 Act. However, it could be seen that only after the full fledged trial, after collecting the data with regard to age, income etc. and upon determining the liability, compensation is ordered.

10. It is worthwhile to take note of the judgment of the Hon'ble Supreme Court in the case of ***Syed Sadiq Vs. Divisional Manager, United India Insurance Co. Ltd., [***reported in **2014 (1) TN MAC 459 (SC)],** wherein the monthly income of a vegetable vendor aged 24 years was fixed as Rs.6,500/- for the accident occurred in the year 2008.

11. In the given background, in my opinion, assuming that if the above said interpretation is accepted, then the provisions of Section 163A of the Act would not be available to persons, who earn above Rs.3,333/- per month. Therefore, any interpretation, which creates inequality among the rich and the poor, cannot be accepted and it obviously hits Article 14 of

the Constitution, the concept of equality before the law. Law does not distinguish rich or poor. However, it should not be forgotten that while granting compensation under Section 163A of the Act, even when the income is more than Rs.40,000/- per month, for applying the structured formula, in order to do effective justice, the income can be scaled down to Rs.40,000/- per month.

12. The Kerala High Court in the case of **National Insurance Company Ltd. Vs. Jabbar [reported in 2007 ACJ 1371]** and the Punjab and Haryana High Court in the case of **National Insurance Company Ltd. Vs. Annie Varkey [reported in 2007 ACJ 1827]** and also in the case of **Oriental Insurance Company Ltd. Vs. Ved Pal [reported in 2007 (3) TAC 759],** held that the claimant is not entitled to compensation if the earning was more than Rs.40,000/- per annum, whereas, the Andra Pradesh High Court in the case of **Haseena Sulthana Vs. National Thermal Power Corporation Ltd. [reported in 2007 ACJ 1832],** held that if the claimant choose to reduce the earnings by choice, the claim can be maintained.

13. In the light of the above discussions and observations and considering the plight of the injured, this Court is inclined to align with the

opinion of the Andra Pradesh High Court in the case of ***Haseena Sulthana.***

14. It is also relevant to note that the Hon'ble Supreme Court in the case of ***U.P. State Road Transport Corporation Vs. Trilok Chandra [reported in (1996) 4 SCC 362]*** has opined that Schedule II of the Act is a guide, as there are innumerable mistakes in income calculation and the figures arrived at. Therefore, the multipliers act as a guide. When a claim petition is filed under Section 163A of the Act, compensation amount is paid without pleading or proof of fault, on the principle of social justice and as a social security measure, because of ever-increasing motor vehicle accidents in the fast-moving society. It is also interesting to note that this special provision under Section 163A of the Act was inserted by Act 54 of 1994 with effect from 14.11.1994.

15. It is the evidence of P.W.1/claimant that on 23.03.2012, at about 1.10 noon, when he was riding his two wheeler bearing Reg.No.TN22 AA 3877, along with his elder brother as a pillion rider along the Arcot Road towards South, a Car bearing Reg.No.TN 10 Z 6082, which came from west to east, rashly driven in high speed, hit his two wheeler, which is not in dispute. Before the Tribunal to prove the accident except

the evidence of the claimant, no other evidence is available on record.

16. For a proper understanding, it is relevant to extract Section 163A of the Motor Vehicle Act as follows :

> 163A. 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.]

17. It is the evidence of P.W.1/claimant that he sustained grievous injuries on account of the accident. It is seen from Ex.P.4-discharge summary given by Vijaya Health Centre that the claimant sustained thin right sub dural haematoma. No doctor was examined in order to ascertain whether he suffered any disability.

18. The reasons and object for the incorporation of Sections 140 and 163A of the Act came to be discussed by the Apex Court in the case of ***Deepal Girishbhai Soni and others Vs. United India Insurance Co. Ltd., [reported in 2004 (5) SCC 385]*** wherein the Hon'ble Bench took the view that while Section 140 of the Act deals with cases of interim compensation leaving it open for the claimant to agitate for final compensation by resorting to the provisions of Section 166 of the Act, Section 163A of the Act provides for award of final compensation on a structured formula following the provisions of the Second Schedule

appended to the Act. Both the Sections i.e. Sections 140 and 163A are based on the concept of “no fault liability” and have been enacted as measures of social security. It was further observed that in a proceeding under Section 163A of the Act, the Tribunal may be required to adjudicate upon various disputed questions like age, income etc., unlike in a proceeding under Section 140 of the Act.

19. The Apex Court also discussed about the above said two provisions in the case of ***Oriental Insurance Company Ltd. Vs. Hansrajbhai V.Kodala [reported in (2001) 5 SCC 175]***. The observation of the Hon'ble Apex Court is as follows;

> “15. ... Compensation amount is paid without pleading or proof of fault, on the principle of social justice as a social security measure because of ever-increasing motor vehicle accidents in a fast-moving society. Further, the law before insertion of Section 163A was giving limited benefit to the extent provided under Section 140 for no-fault liability and determination of compensation amount on fault liability was taking a long time. That mischief is sought to be remedied by introducing Section 163A and the disease of delay is sought to be cured to a large extent by affording benefit to the victims on structured-formula basis. Further, if the question of determining compensation on fault liability is kept alive it would result in a additional litigation and complications in case claimants fail to establish liability of the owner of the defaulting vehicles”.

20. As the Apex Court was not in agreement with the reasoning given by the Two Judges Bench in the case of **National Insurance Company Limited Vs. Sinitha and others [reported in (2012) 2 SCC 356, a Coordinate Bench of the Apex Court in the case of United India Insurance Company Ltd. Vs. Sunil Kumar [reported in (2014) 1 SCC 680]** referred the matter for resolution of what appeared to be the question of law, which is as hereunder :

> "Whether in a claim proceeding under Section 163A of the Motor Vehicles Act 1988 it is open for the insurer to raise the defence/plea of negligence?

21. It is also relevant to note that the aforementioned question was also referred to a Larger Bench in the case of **United India Insurance Company Ltd. Vs. Shila Datta [reported in (2011) 10 SCC 509].** The Apex Court, on 24.11.2017, in the case of **United India Insurance Company Ltd. Vs. Sunil Kumar and another [reported in 2017 (2) TN MAC 753 (SC)]** held that in a proceeding under Section 163A of Act, it is not open for the insurer to raise any defence of negligence on the part of the victim.

22. ***Sivaji and Another Vs. Divisional Manager, United india Insurance Co. Ltd. And others, [Civil Appeal No.2816 of 2018 dated 09.08.2018]*** is a case where the driver of a car met with an accident by dashing into a truck resulting in the death of the driver of the car and injuries to two persons, all of whom were traveling in the car. The parents of the deceased Shaji Shivaji Dudhade filed the claim petition and sought for compensation under Section 163A of Act, 1988. The Tribunal, holding that the question of proving negligence did not arise, passed an award for Rs.4,60,800/- together with interest at the rate of 9% per annum. The said judgment was challenged by the Insurer before the High Court of Karnataka. Simultaneously, the parents of the deceased had also preferred an appeal before the Karnataka High Court for enhancement of compensation. The High Court of Karnataka allowed the Insurer's appeal and set aside the order of the Tribunal holding that the idea behind enacting Section 163A of the Act is to ensure that even in the absence of any mistake on the part of the driver of the offending vehicle, the injured persons or the legal heirs of the deceased persons are compensated by the owner and the insurer. It has been further held that since the victim has been contemplated to be an innocent third party, protection is extended only to the injured person or to the legal heirs of the deceased victim and

not to the driver, who is responsible for causing the said accident. Since the deceased driver in this case was the tortfeasor and responsible for causing the accident, the High Court held that compensation could not have been awarded to the appellants. The Apex Court allowed the appeal with reasoning therefor and it has been held as follows :

> *"The issue which arises before us is no longer res integra and is covered by a recent judgment of three Judges of this Court in* ***United India Insurance Co. Ltd. Vs. Sunil Kumar and Another*** *wherein it was held that to permit a defence of negligence of the claimant by the insurer and/or to understand Section 163A of the Act as contemplating such a situation, would be inconsistent with the legislative object behind introduction of this provision, which is "final compensation within a limited time frame on the basis of the structured formula to overcome situations where the claims of compensation on the basis of fault liability was taking an unduly long time."*

23. Therefore, it is vividly clear that as per the law laid down by the Apex court, in a petition under Section 163 A of the Act, the Insurer cannot raise any defence of negligence. Therefore, as aforementioned, the Insurer is not permitted to raise defence of negligence and in view of the fact that the petition was filed under Section 163A of the Act, this Court is of the considered view that the claimant is entitled to be paid compensation as per Section 163A of the Act and on structured formula basis as per Schedule II for the loss of earning, as the claimant suffered thin right sub dural haematoma limiting his monthly income at Rs.3,300/- and for two months, Rs.6,600/- is granted.

24. Accordingly, the compensation determined by this Court is tabulated as follows;

Sl. No.	***Description***	***Amount awarded by this Court***
1	Loss of earnings	Rs.6,600/-
2	Pain and sufferings	Rs.5,000/-
3	Medical Expenses	Rs.19,129/-
	Total	**Rs.30,729/-**

25. A sum of **Rs.30,729/-** is awarded as compensation, and the same would carry interest at the rate of 7.5% per annum from the date of petition till the date of realisation.

26. In the result,

(i) The Civil Miscellaneous Appeal is **allowed**. No costs.

(ii) A sum of **Rs.30,729/-** is awarded as compensation.

(iii) The 2nd respondent / Insurance Company is directed to deposit the compensation amount determined by this Court i.e., **Rs.30,729/-** together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit to the credit of in M.C.O.P. No.2422 of 2012 on the file of the Motor Accident Claims Tribunal (V Small Causes Court) Chennai, within a period of eight weeks from the date of receipt of a copy of this Judgment.

(iv) On such deposit being made, the appellant / claimant is at liberty to withdraw the same on filing of cheque petition. The claimant is directed to pay the Court fee for the amount granted by this Court, if required. The Tribunal below shall disburse the award amount upon production of the certified copy showing proof of payment of Court fee by the claimant.

05.07.2023

Index : Yes/No
Speaking / Non-speaking order
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To:

1. The Motor Accident Claims Tribunal
   (V Small Causes Court) Chennai,

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

R.KALAIMATHI, J.,

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C.M.A.No.2749 of 2019

05.07.2023