

(2013) 10 MAD CK 0129
In the Madras High Court
Case No : C.M.A. No. 2740 of 2012

Royal Sundaram Alliance Insurance Co. Ltd.	APPELLANT
Vs	
Rathnagirivelan @ Velu, M/s. Hariharan Logistics, Thiru Sheik Basha and Divisional Manager National Insurance Co. Ltd.	RESPONDENT

Date of Decision : 29-10-2013

Acts Referred:

Citation : (2013) 10 MAD CK 0129

Hon'ble Judges : P.R. Shivakumar, J

Bench : Single Bench

Advocate : M. Krishnamoorthy, for the Appellant; U. Minnavadi for R1, for the Respondent

Final Decision : Dismissed

Judgement

P.R. Shivakumar, J.—Though R4 was served with notice and the name of R4 is printed in the cause list, none appears on behalf of R4. This appeal is directed against the award of compensation passed by the Motor Accident Claims Tribunal, (Principal District Judge), Cuddalore dated 20.3.2012 made in M.C.O.P. No. 2158 of 2006 directing the appellant herein to pay a sum of Rs. 4,63,690/- as compensation for the injuries sustained by the first respondent herein in a road accident that took place on 9.2.2006, together with an interest at the rate of 6% per annum from the date of filing of the MCOP till the date of deposit and also costs.

2. The facts leading to the filing of the appeal are as follows:

(i). On 9.2.2006 at about 5.30 a.m. the first respondent, Rathnagirivelan @ Velu, was driving a lorry bearing registration No. TN.10.C.3355 which stood insured with the fourth respondent herein. While the first respondent herein was driving the lorry bearing registration No. TN.10.C.3355 on the Ranipettai bye pass road over bridge, the same collided with the container lorry bearing registration NO. TN.04.M.5826 owned by the second respondent herein and insured with the third

respondent herein which came in the opposite direction. In the said accident, the first respondent herein sustained grievous injuries including fracture in the right leg and left thigh and laceration of the urethra requiring treatment including bone grafting.

(ii). Contending that even after taking proper treatment, he suffered permanent disability, which was assessed by the Medical Officer at 60% and the said disability has eventually resulted in loss of earning capacity, the first respondent herein chose to prefer a claim against the owner and the insurer of the container lorry bearing registration NO. TN.04.M.5826.

(iii). Though a claim was made u/s 163A of the Motor Vehicles Act, 1988, the first respondent had chosen to make a claim of Rs. 11,00,000/- as compensation. It was also averred by him in the petition filed u/s 163A of the Motor Vehicles Act, 1988 that the accident occurred due to the rash and negligent driving of the vehicle with registration NO. TN.04.M.5826, belonging to the second respondent herein, which was insured with the appellant herein.

(iv). The second respondent herein, namely, the owner of the said vehicle, did not contest the claim and he remained ex parte. The owner and the insurer of the vehicle driven by the first respondent/injured, namely, respondents 3 and 4 herein also remained exparte.

(v). The appellant herein, who figured as the second respondent in the MCOP alone contested the case based on the averments found in the counter statement. In the counter statement, the appellant chose to project his case that it is not liable to pay any compensation. According to it, the first respondent/injured was solely responsible for the accident, as he drove the vehicle without a valid licence, in a rash and negligent manner.

(vi). Even though a person making a claim u/s 163A of the Motor Vehicles Act, 1988, need not plead and prove any fault on the part of the driver of the vehicle, the Tribunal chose to treat the petition as one in which the claimant had to establish the fault on the part of the driver of the other vehicle, whose owner and insurer were sought to be held liable to compensate the injured.

(vii). In the enquiry conducted by the Tribunal, two witnesses were examined on the side of the first respondent herein/claimant as P.W. 1 and P.W. 2 and 11 documents were marked on his side as Exhibits P.1 to P.11. No witness was examined on the side of the appellant, the second respondent in the MCOP. However, certified copies of the Motor Vehicle Inspector's Report and the charge sheet were produced and marked as Exhibits R.1 and R2.

(viii). The Tribunal, after considering the evidence, passed an award on 20.3.2012 holding the appellant, as the insurer of the container lorry bearing registration NO. TN.04.M.5826 belonging to the second respondent herein, liable to pay compensation to the first respondent herein and fixed a sum of Rs. 4,63,690/- to be the compensation to which the first respondent/injured was

entitled. Accordingly, the award was passed directing the appellant herein to pay the said amount together with interest at the rate of 6% per annum and also costs.

3. The said award of the Tribunal is challenged by the appellant in this civil miscellaneous appeal preferred u/s 173 of the Motor Vehicles Act, 1988, not on the question of quantum but on the question of liability. The point, that arises for consideration in this appeal is, "whether the Tribunal has committed any error in holding the appellant/insurance company liable to pay the compensation to the first respondent/injured?"

4. The arguments advanced by Mr. M. Krishnamoorthy, learned counsel for the appellant and Mr. U. Minnavadi, learned counsel for the first respondent are heard. The materials available on record are also perused.

5. A claim was made by the first respondent not u/s 166 of the Motor Vehicles Act, 1988, but u/s 163A of the Motor Vehicles Act, 1988, against the owner and the insurer of the container lorry bearing registration NO. TN.04.M.5826, of course, by making an averment that the accident took place due to the rash and negligent driving of the said lorry by its driver, even though such an averment is not necessary while making a claim u/s 163A of the Motor Vehicles Act, 1988. When a claim is made under the said Section, it shall be sufficient to state that the accident took place involving the motor vehicle belonging to one of the respondents and it was insured with the other respondent that the accident resulted in death or permanent disability and that the deceased or injured was having an annual income of not more than Rs. 40,000/-. Apart from those facts, the other facts need not be pleaded and the other facts need not be proved by him, even if pleaded.

6. For the better appreciation, the Section 163A of the Motor Vehicles Act, 1988, is reproduced:

163-A. 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 (now the name of the Act has been changed to Employees' 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.

7. A reading of the said Section will make it clear that a claimant making a claim for compensation for the death or permanent disability caused in an accident involving the motor vehicle shall not be required to plead or establish that the death or permanent disability was due to any wrongful act or neglect or default of the owner of the vehicle or of any other person. Though the first respondent/claimant might have chosen to plead in his claim petition that it was the driver of the vehicle bearing registration NO. TN.04.M.5826 belonging to the second respondent, which was insured with the appellant was at fault and his rashness and negligence alone led to the accident in question, it is quite immaterial in a claim made u/s 163A of the Motor Vehicles Act, 1988, provided the claimant is found entitled to avail the benefit of Section 163A of the Motor Vehicles Act, 1988.

8. In this case, the first respondent/claimant gave his monthly income to be Rs. 3,333.30/- per month to show that his annual income did not exceed Rs. 40,000/-. The Tribunal, however, held his monthly income to be Rs. 3,000/- and thus, annual income to be Rs. 36,000/-. Thus, the Tribunal has held in clear terms that the first respondent/claimant was a person entitled to claim compensation as per the structured formula u/s 163A of the Motor Vehicles Act, 1988. However, even after holding the first respondent/claimant to be entitled to make a claim u/s 163A of the Motor Vehicles Act, 1988, the Tribunal embarked upon the unnecessary exercise of probing the cause of the accident to render a finding that the accident took place due to the rashness and negligence on the part of the driver of the vehicle belonging to the second respondent, which stood insured with the appellant. The same is the reason why the appellant has got a ground for filing the present appeal. However, even assuming that the first respondent/claimant failed to prove that there was any fault on the part of the driver of the vehicle belonging to the second respondent which was insured with the appellant, the claim made by the first respondent/claimant u/s 163A of the Motor Vehicles Act, 1988, cannot be defeated. Therefore, the appellant's contention that the Tribunal committed an error in mulcting the liability on the appellant as the insurer of the vehicle bearing registration NO. TN.04.M.5826 belonging to the second respondent cannot be countenanced, especially, when the factum of accident and the involvement of the said vehicle in the accident is not disputed.

9. Though the appellant had raised a plea before the Tribunal that the driver of the second respondent, who drove the vehicle bearing registration NO. TN.04.M.5826, insured with the appellant did not possess a valid driving licence, there was no evidence adduced on the said of the appellant to prove the same to deny the liability of the appellant/insurer to indemnify the owner of the vehicle

bearing registration NO. TN.04.M.5826. On the other hand, the appellant had taken a stand that it was the first respondent/injured who drove the lorry belonging to the third respondent bearing registration No. TN.10.C.3355 without a valid licence. In this regard the appellant had placed reliance on the First Information Report in support of its contentions. It is quite immaterial whether the injured did have a valid driving licence or not, because the claim was made against the owner and the insurer of the container lorry bearing registration NO. TN.04.M.5826, namely, the second respondent herein and the appellant herein. Unless the appellant is in a position to prove that the driver of the lorry belonging to the second respondent of which the appellant was the insurer did not possess a valid licence and hence there was violation of a policy condition, the appellant insurance company cannot escape its liability of indemnifying the second respondent herein. Though the appellant had taken a stand that the driver of the lorry belonging to the second respondent, of which the appellant was the insurer did not possess a valid driving licence, there is no evidence to prove the same. The Tribunal has rightly held that the appellant had failed to prove the absence of the driving licence for the driver of the second respondent herein and violation of the policy condition. Therefore, this Court finds no infirmity or defect in the findings of the Tribunal that the appellant herein, as the insurer of the container lorry bearing registration NO. TN.04.M.5826 belonging to the second respondent, should be mulcted with the liability to pay compensation as per the structured formula u/s 163A of the Motor Vehicles Act, 1988.

10. So far as the quantum is concerned, admittedly, the Tribunal took the correct age of the first respondent/claimant and applied the appropriate multiplier as per the schedule clarified and modified by the Supreme Court in *Reshma Kumari and Others Vs. Madan Mohan and Another*, . The other conventional damages have also been awarded as per the schedule. That is the reason why the appellant does not challenge the award regarding the quantum of compensation. For all the reasons stated above, this Court comes to the conclusion that there is no merit in this appeal and the same deserves dismissal. Accordingly, the Civil Miscellaneous Appeal is dismissed. However, there shall be no order as to costs. Connected M.P. No. 1 of 2012 is closed.