SUPREME COURT OF INDIA

A.Sridhar

Vs.

United India Ins.Co.Ltd.& Anr.

C.A.No.7823 of 2011

(G.S.Singhvi and H.L.Dattu,JJ.,)

13.09.2011

JUDGMENT

H.L.Dattu,J.,

SLP(Civil)No.6617 of 2011

1. Leave granted.

2. This appeal is directed against the Judgment and Order passed by the High Court of Madras, Chennai in Civil Miscellaneous Appeal No. 1779 of 2002, wherein, the Court has allowed the appeal of the Insurance Company and reduced the compensation awarded by the Motor Accident Claims Tribunal, Chennai (for short, "the Tribunal") from `1,60,000/- to `25,000/- under Section 140 of the Motor Vehicles Act, 1988 (hereinafter referred to as, "the Act").

3. In the Claim Petition filed under Section 166 of the Act, the appellant has stated that on 14.01.1998, at about 7.10 PM, while he was riding the motor cycle along with a pillion rider, the vehicle met with an accident due to oil spill on the road and suffered grievous injuries. Since the vehicle is insured with the respondent-Insurance Company, he is entitled for compensation of `6,00,000/- (Rupees Six Lakhs) as general damages/compensation.

4. The Insurance Company has denied its liability. The Tribunal, while considering the claim of the appellant, has come to the conclusion that the accident did not take place due to rash and negligence driving of the claimant but due to oil spilling on the road. Accordingly, the Tribunal has assessed the compensation payable to the claimant at a sum of `1,60,000/- together with interest at 6% per annum under the Insurance Policy.

5. In the appeal filed by the Insurance Company, the High Court, has taken exception to the order passed by the Tribunal and has come to the conclusion that the Tribunal is not justified in allowing the claim petition moved under Section 166 of the Act and ought to have

determined the compensation payable under Section 140 of the Act. Accordingly, the High Court has modified the award and has reduced the compensation payable to `25,000/-.

6. Aggrieved by the Judgment and Order, the claimant is before us in this appeal.

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 use 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.

H.L.Dattu,J.,

1. Leave granted.

2. This appeal is directed against the Judgment and Order passed by the High Court of Judicature at Madras in Civil Miscellaneous Appeal No. 2099 of 2002 dated 12.04.2010. By the impugned judgment, the Court has modified the compensation awarded by the Motor Accident Claims Tribunal, Chennai (for short, "the Tribunal") in MCOP No.1971 of 1998 dated 12.02.2002.

3. The facts are not in dispute. Claimant was a pillion rider of a motor cycle which was driven by one A. Sridhar. It met with an accident due to oil spill on the road on 14.01.1998 at about 7.10 P.M. The claimant and the driver of the vehicle sustained injuries. Both of them were treated in the hospital for the injuries sustained by them. The vehicle was insured with United India Insurance Company Ltd. - respondent No.1 by the owner of the vehicle - respondent No.2. The claimant filed claim petition before the Tribunal inter-alia requesting to award compensation at a sum of `12,00,000/- (Rupees Twelve lakhs only) under various heads. Claimant had examined himself as PW-2 and other witnesses, including Dr. J.R.R. Thiagarajan - PW-3, who had assessed the disability sustained by the claimant at 75%. The Tribunal, after considering the various factors, including the medical evidence, had quantified the compensation payable by the Insurance Company at a sum of `3,50,000/-. Being aggrieved by the compensation so awarded by the Tribunal, the claimant had preferred Civil Miscellaneous Appeal No.2099 of 2002, before the High Court of judicature at Madras. The Court, after re-considering the claim of the claimant and re-appreciating the evidence

on record, has enhanced the compensation to `4,90,000/- from `3,50,000/- awarded by the Tribunal. It is this judgment and order which is called in question in this appeal.

4. We have heard learned counsel for the parties to the lis and perused the records.

5. We do not intend to disturb the judgment and order passed by the High Court except to a limited extent. The High Court, while assessing the compensation payable to the claimant, has arrived at the loss of earning capacity in a sum of ` 8,16,000/- and, thereafter, though the Doctor has assessed 75% disability, has taken into account 50% disability while calculating the loss of income without any rhyme or reason. In our view, this is a mistake committed by the High Court. It is no doubt true that, while making assessment, there is an element of guess work, but that guess work again must have reasonable nexus to the available material/evidence and the quantification made. In the instant case, the claimant had not only examined himself to sustain the claim made in the petition but also Dr. J.R.R. Thiagarajan, PW-3, who has stated that the claimant has suffered 75% disability, by referring to the Disability Certificate issued by a competent Doctor who had treated the claimant. Though the Doctor is cross- examined at length by learned Advocate for the Insurance Company, nothing adverse to the interest of the claimant is elicited. Therefore, the Tribunal has rightly accepted the evidence of the Doctor-PW-3. However, the High Court has taken 50% disability into account while calculating the loss of income. This, in our view, is the mistake committed by the High Court. We hastened to add that we are not saying that under all circumstances, the Court has to blindly accept the Disability Certificate produced by the claimant. The Court has the discretion to accept either totally or partially or reject the Certificate so produced and marked in the trial but, that, can be done only by assigning cogent and acceptable reasons. In this view of the matter, we take the disability suffered by the claimant at 75% and calculate the loss of income of the claimant keeping in view the loss of earning capacity of the claimant assessed by the High Court. Accordingly, we arrive at the loss of earning capacity of the claimant at `6,12,000/-.

6. In the result, the appeal is partly allowed. We direct the Insurance Company to deposit a sum of `6,12,000/- after deducting the amount already paid or deposited with accrued interest of 6% from the date of filing of the claim petition till its payment before the Tribunal within two months from today. On such deposit, the Tribunal is directed to release the amount to the claimant. No order as to costs.