



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.11.2017

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.M.A.(MD)No.73 of 2016
and
CMP(MD)No.1436 of 2016
&
CMP(MD)No.3721 of 2017

The Branch Manager,
United India Insurance Company Ltd,
No.254, Good Shed Street,
Madurai - 625 001.

... Appellant / Respondent

Vs.

S.Sabeer Ahamed

... Respondent / Petitioner

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 21.09.2015 made in M.C.O.P.No.193 of 2013 on the file of the Motor Accidents Claims Tribunal / Special Sub Judge for MCOP Cases, Madurai.

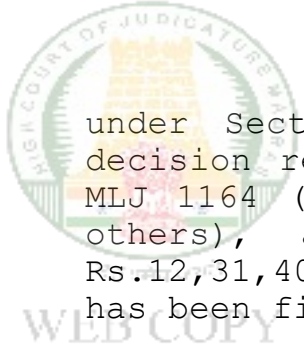
For Appellant : Mr.G.Prabhu Rajadurai
For Respondents : Mr.A.Arumugam
for Ajmal Associates

JUDGMENT

The appellant insurance company has filed this appeal questioning the impugned award on the ground that the very claim petition filed in this case is not maintainable.

2.One Sabeer Ahamed is the owner of the two wheeler in question. The said two wheeler enjoyed the personal package policy issued by the appellant herein. On 13.07.2012 at about 03.30 p.m when the claimant was riding his two wheeler, he was hit by an unknown vehicle. In the resulting accident, the claimant suffered serious injuries. The medical treatment alone came to more than eight and half lakhs. Since it was a hit and run accident, the claimant chose to claim compensation against his insurer.

3.He filed MCOP.No.193 of 2013 on the file of the Motor Accidents Claims Tribunal / Special Sub Judge for MCOP Cases, Madurai originally under Section 163 of the Motor Vehicles Act, 1988. Subsequently, it was amended and the claim was proceeded



under Section 163 A of the Act. The Tribunal following the decision rendered by the Hon'ble Supreme Court reported in 2012 1 MLJ 1164 (SC) (National Insurance Company Limited vs. Sinitha and others), allowed the claim petition and awarded a sum of Rs.12,31,400/- with interest. Aggrieved by the same, this appeal has been filed by the insurer.

4.The core contention raised by the learned counsel appearing for the appellant is that the claim petition is not maintainable. It is seen that the claim petition was filed under Section 163 A of the Motor Vehicles Act, 1988. The said provision falls in Chapter VII of the M.V Act, 1988. The heading given to the said chapter is "Insurance of Motor vehicles against third party risks". Of course, the heading given to a chapter in a Statute cannot control the legislative intention or the effect of the statutory provision. But, one can always take the assistance of the chapter heading. In the present case, the petition has been filed under Section 163 A of the Act.

5.The said provision states that the vehicle owner or the authorised insurer shall be liable to pay compensation to the victim or the legal heirs of the victim as the case may be. Therefore, legislative intention is clear. The said provision is meant to ensure speedy disbursement of the compensation amount without going into the question of whether the victim was really at fault. In other words, enquiry into the question of negligence is not contemplated the said provision. This provision is not intended to deal with those cases where the vehicle owner himself is the victim. There cannot be a claim at the instance of the insured against the insurer. Of course, if the claim can be brought within the four corners of the terms of the policy, such a claim would certainly lie.

6.In the present case, the insurance policy has been marked as Ex.R2 and R3. The terms of the policy do not enable the insured to lay a claim against his own insurer. Particularly, in this case, which is a hit and run accident. The Tribunal erred in allowing the claim petition. The claim petition is clearly not maintainable. The impugned award dated 21.09.2015 made in M.C.O.P.No.193 of 2013 on the file of the Motor Accidents Claims Tribunal / Special Sub Judge for MCOP Cases, Madurai is set aside.

7.This appeal is allowed. The appellant insurance company is permitted to withdraw the deposited amount, if the amount already deposited. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS-II)

/True Copy/

<https://hcservices.ecourts.gov.in/hcservices/>

Sub Assistant Registrar



To

1. Special Sub Judge for MCOP Cases /
Motor Accident Claims Tribunal, Madurai.

2. The Record Keeper, Vernacular Section,
Madurai Bench of Madras High Court,
Madurai. **(Two Copies)**

+1cc to M/S.G.Prabhu Rajadurai, Advocate SR.No. 89761

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JM/GT/SAR 1/07.03.2018/3P/5C