



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.11.2017

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.M.A. (MD) Nos.774 of 2016

and

CMP (MD) No.7493 of 2016

The Manager,
National Insurance Company Ltd,
No.74-A, Paramathi Road,
Namakkal.

... Appellant/Respondent 2

Vs.

1.V.Jotheeswaran

D.Ramesh (died)

... 1st Respondent/Claimant

2.Santhosam

3.Minor Sajanasri

4.Minor Rithhasa

(Minors 3 and 4 are represented
through their mother and natural
guardian, Santhosam,

the second respondent)... Respondents 3 to 5/Respondents 3 to 5

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 24.02.2015 made in M.C.O.P.No.22 of 2013 on the file of the Motor Accident Claims Tribunal, Additional Sub Court, Karur.

For Appellant : Mr.D.Sivaraman

For Respondents : Mr.B.Rajesh Saravanan for R2
R3&R4 minors, rep. by R2
Mr.K.Balasubramani for R1

JUDGMENT

The insurance company has filed this appeal questioning the impugned award principally on the ground of negligence.

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

2.One Jotheeswaran was riding a two wheeler and proceeding



from South to North in Noyyal Kurukkusalai to Velayuthampalayam main road on 02.10.2012 at about 03.00 P.M. A car insured by the appellant was coming from the opposite direction. There was a collision between the two vehicles. The claimant suffered fracture. He filed MCOP.No.22 of 2013 on the file of Motor Accident Claims Tribunal, Additional Sub Court, Karur. The Tribunal fixed the entire negligence on the car driver and awarded a sum of Rs.1,36,000/- with interest. Contending that the finding of the Tribunal is erroneous, this appeal has been filed.

3. Heard the learned counsel for the parties.

4. The learned counsel appearing for the claimant drew my attention to the recent decision of the Hon'ble Supreme Court in **Civil Appeal No.9694 of 2013 dated 24.11.2017 (United India Insurance Co., Vs. Sunil Kumar & Anr)**. He would contend that enquiry into the issue of who was at fault is really alien to a proceeding under Section 163 A of the Act.

5. It is true that the petition filed by the claimant includes Section 163A among several other sections that are mentioned as usual when a claim petition is filed under the Act. Even according to the claimant, he would earn a sum of Rs.7,500/- per month. Therefore, his annual income would be Rs.90,000/-. To invoke Section 163 A of the Act, the annual income of the victim should be Rs.40,000/- or less. Therefore, obviously the said provision cannot be made applicable in this case.

6. The principal contention alleged by the learned counsel appearing for the appellant is that the rough sketch marked in this case as Ex.R1 was not even taken note of by the Tribunal. The claimant was examined as PW.1. He was specifically confronted with Ex.R1. During the cross examination the veracity of the contents of the said document was admitted by the claimant. A mere look at the said rough sketch would reveal that the accident occurred on the right side of the road when it viewed there South to North. In other words, the accident took place on the wrong side of the road when it is viewed from the direction in which the claimant was travelling.

7. Therefore, in the very nature of things, the negligence should have been equally apportioned between both the vehicles. The Tribunal clearly erred in fastening the negligence on the car driver. I am of the view that the award passed by the Tribunal will have to be modified accordingly. The claimant will be entitled to a sum of Rs.68,000/- with interest.

8. The award dated 24.02.2015 made in M.C.O.P.No.22 of 2013 on the file of the Motor Accident Claims Tribunal, Additional Sub Court, Karur is modified.



6.The appellant insurance company is directed to deposit the sum of Rs.68,000/- with interest at the rate of 7.5% per annum, from the date of petition till the date of realization and costs, within a period of eight weeks from the date of receipt of a copy of this order, less the amount already deposited, if any. On such deposit, the claimant is permitted to withdraw the same by filing proper application before the Tribunal, less the amount already withdrawn by him, if any.

7.This Civil Miscellaneous Appeal is partly allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(RTI)

/True Copy/

Sub Assistant Registrar

To

1. The Additional Subordinate Judge,
Motor Accident Claims Tribunal, Karur.
2. The Record Keeper, Vernacular Section,
Madurai Bench of Madras High Court,
Madurai. (2 copies)

+ 1 cc TO Mr.D.Sivaraman , Advocate in SR No. 90484
+ 1 cc TO Mr.K.Balasubramani , Advocate in SR No. 90330

Skm

AE/KKR/SAR1/31.05.2018/3P/6C

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