

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:18.02.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.4693 of 2019

Arulmurugan

...Appellant/Claimant

Vs.

1.Shanmugam

2.United India Insurance Co., Ltd.,

146 N, Kumar Complex, Annasalai,

Tiruchengode Taluk,

Namakkal District-637 211.

...Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 07.03.2019 made in M.C.O.P.No.107 of 2014 on the file of the Motor Accident Claims Tribunal, Sub Court, Tiruchengode.

For Appellant :Mr. T.S.Arthanareeswaran

for M/s.C.Paraneedharan

For R2 : Mr.J.Chandran

R1 :Exparte

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the dismissal order dated 07.03.2019 made in M.C.O.P.No.107 of 2014, on the file of the Motor Accident Claims Tribunal, Sub Court, Tiruchengode.

2. The appellant filed M.C.O.P.No.107 of 2014 on the file of the Motor Accident Claims Tribunal, Sub Court, Tiruchengode, claiming a sum of Rs. 15,00,000/- (Rupees Fifteen Lakhs) as compensation for the injuries sustained by him in the accident that took place on 16.09.2013.

3. According to the appellant, on the date of accident i.e., on 16.09.2013, at about 10.45 am., while the appellant was driving his TN-34-H-1717 Santro car on Namakkal - Tiruchengode Road, near Palakkad, the vehicle lost its control and dashed against a tamarind tree on the left side corner of the road. A case in Crime No.132/2013 under Sections 279, 337, 338 IPC has been registered against the owner of the vehicle/1st respondent. In the accident, the appellant sustained grievous injuries all over the body. Therefore, the appellant filed the above said claim petition claiming compensation against the respondents.

4. The 1st respondent owner of the Santro Car bearing Reg.No.TN-34-H-1717 remained exparte before the Tribunal.

5.The 2nd respondent-Insurance company, filed counter statement denying all the averments made in the claim petition and stated that FIR was filed by one Revathi, Wife of appellant against him in Crime No.132/2013 in Elachipalayam Police Station, Namakkal District and the charge sheet has also been filed against the appellant. Being Tortfeasor, the appellant cannot claim any compensation from the 2nd respondent/Insurance company and therefore, the claim petition is liable to be dismissed against the 2nd respondent.

6. Before the Tribunal, the appellant examined himself as P.W.1 and Dr.Ramesh and another Dr.Kesavamoorthy were examined as P.Ws.2 and 3 and marked ten documents as Exs.P.1 to P.10. The 2nd respondent/Insurance company examined two witnesses as R.W.1 and R.W.2 and marked two documents as Exs.R.1 and Ex.R.2.

7. The Tribunal, considering the pleadings, oral and documentary evidence, held that accident occurred only due to negligence on the part of the appellant and dismissed the claim petition holding that the claim petition under Section 166 of the Motor Vehicles Act is maintainable only against the person who was negligent and caused the accident and appellant being a tortfeasor is not entitled to get compensation under Section 166 of the Motor Vehicles Act and also under Section 163-A of the Motor Vehicles Act, as he claimed that he is earning a sum of Rs.30,000/- per month.

8. Against the order of dismissal dated 07.03.2019 made in M.C.O.P.No.107 of 2014, the appellant has come out with the present appeal for granting compensation.

9. The learned counsel appearing for the appellant contended that the Tribunal having held that accident has occurred due to rash and negligent act of the driver of the car, erred in dismissing the claim petition, is contrary to the judgments of

the Hon'ble Apex Court and this Court. The learned counsel appearing for the appellant further contended that appellant filed claim petition both under Sections 166 and 163-A of the Motor Vehicles Act and the Tribunal erroneously dismissed the claim petition without considering the fact that when the claim petition is filed under Section 163-A of the Motor Vehicles Act, the claimant need not prove negligence. In the accident, the appellant suffered grievous injuries, took treatment as in-patient in the hospital for seven days and spent Rs.78,102/- for medical expenses. The appellant was doing agricultural work and is owning Rig unit and was earning Rs.30,000/- per month before the accident. Due to the injuries he lost his entire earning capacity. The Tribunal ought to have awarded compensation under Section 163-A of the Motor Vehicles Act as per the judgments of the Division Bench of this Court reported in 2019(1)TNMAC 72 (DB) (Oriental Insurance Company Vs. V.Bhuvaneswari) and 2019 (2) TNMAC 293 (DB) (Chinnathamani and others Vs. Amman Granites and another) and prayed for granting compensation.

10. Per contra, learned counsel appearing for the 2nd respondent made his submissions in support of the award passed by the Tribunal and prayed for dismissal of the appeal.

11. Heard learned counsel appearing for the appellant as well as the 2nd respondent and perused the entire materials available on record.

12. From the materials available on record and award of the Tribunal, it is seen that based on oral and documentary evidence, the Tribunal has held that accident has occurred only due to rash and negligent driving by the appellant. In view of such finding, the Tribunal held that claim petition under Section 166 of the Motor Vehicles Act is not maintainable. The Tribunal further held that the appellant has claimed that he was earning Rs.30,000/- per month by doing agricultural work and owning Rig Unit. In view of the said contention the Tribunal held that claim petition under Section 163 A of the Motor Vehicles Act is also not maintainable as the income of the appellant exceeds the maximum income fixed in II Schedule to Section 163-A.

13. The Tribunal has appreciated the entire materials on record in proper perspective and dismissed the claim petition by giving cogent and valid reason. There is no error in the said finding of the Tribunal. In view of the above, the judgments relied on by learned counsel appearing for the appellant are not applicable to the facts of the present case.

14. For the above reason, the appeal is dismissed as devoid of merits and the order passed by the Tribunal in M.C.O.P.No.107 of 2014 dated 07.03.2019 is confirmed. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

1.The Subordinate Judge,
Motor Accidents Claims Tribunal,
Tiruchengode.

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

+1cc to Mr.J.Chandran, Advocate Sr.13834

+2cc to Mr.C.Paraneedharan, Advocate Sr.13719

C.M.A.No.4693 of 2019

vba[col]

srg 22/12/2020

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