

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.01.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.NO.4753 OF 2019

Gopinath

.. Appellant/Petitioner

Vs.

1. Shanmugam

2. Reliance General Insurance Company Limited,
3rd Floor, No.408, Perundurai Road,
Erode 638 011.

.. Respondents/Respondents

Prayer:

This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 26.02.2019 made in M.C.O.P.No.40 of 2014 on the file of the Motor Accident Claims Tribunal/Sub Court, Tiruchengode.

For Appellants : Mr.T.S.Arthanareeswaran
For Respondents : Service Awaited

J U D G M E N T

This Civil Miscellaneous Appeal is filed challenging the dismissal of the claim petition by the Tribunal by the award dated 26.02.2019 made in M.C.O.P.No.40 of 2014 on the file of the Motor Accident Claims Tribunal/Sub Court, Tiruchengode.

2.The appellant is claimant in M.C.O.P.No.40 of 2014 on the file of the Motor Accident Claims Tribunal/Subordinate Court, Tiruchengode. He filed the above said claim petition, claiming a sum of Rs.15,00,000/- as compensation for the injuries sustained by him in the accident that took place on 29.09.2013.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent riding by the appellant, rider of the motorcycle and dismissed the claim petition.

4.Against the said order of dismissal dated 26.02.2019 made in M.C.O.P.No.40 of 2014, the appellant has come out with the present appeal.

5.The learned counsel appearing for the appellant contended that the Tribunal erred in dismissing the claim petition without properly appreciating the materials on record. The accident occurred only due to the rash and negligent riding by the rider of the motor cycle bearing Registration No.TN 34 B 1983. The Tribunal failed to see that the appellant can maintain the claim petition both under Sections 163 (A) and 166. The appellant was working in the textile shop and was earning a sum of Rs.30,000/- per month. He was aged 22 years at the time of the accident. Due to the injuries, he has lost his earning power and prayed for allowing this appeal and granting compensation.

6.Heard the learned counsel for the appellant and perused the entire materials available on record.

7.From the material on records, it is seen that while the appellant was riding in his motor cycle bearing Registration No.TN 33 AV 8587 dashed against the motor cycle bearing Registration No.TN 34 P 1983, which was preceeding the vehicle of the appellant. The First Information Report was registered against the appellant. The appellant has admitted in his cross examination that FIR was registered against him and charge sheet was also filed against him for causing injuries to one Kavery who was travelling as a pillion rider in the motor cycle bearing Registration No.TN 34 P 1983. The Tribunal considering the evidence of PW.1/appellant, the contents of the First Information Report and charge sheet, has held that the accident had occurred only due to the rash and negligent riding by the appellant and dismissed the claim petition. There is no error in the said finidng warranting intereference by this Court.

8.The contention of the learned counsel appearing for the appellant that the claim petition filed by the appellant is maintainable both under Sections 163(A) and 166 is not correct. Both the Sections are independent to each other. When the claim is made under wrong provision of law, Courts have power to mould the relief and grant compensation based on correct provision of law. In the present case, the claim of the appellant cannot be converted as in the claim petition filed under Section 163(A) of Motor Vehicles Act, the appellant has stated that he was earning a sum of Rs.30,000/- per month, while in the grounds of the appeal, he has claimed that he was earning a sum of Rs.15,000/- per month. The claim petition under Section 163 (A) can be filed by the claimant only if his annual income is Rs.40,000/- or less. In the claim petition under Section 166, the claimant has to prove the negligence on the part of the offending vehicle. In the present case, the negligence is not on the part of the motor cycle bearing Registration No.TN 34 P 1983, which was preceeding the appellant's motorcycle, but the accident had occurred only due to the rash and negligent riding by the appellant. Hence,

the appellant cannot maintain a claim petition against the respondents 2 and 3 who are the owner and insurer of motorcycle bearing Registration No.TN 34 P 1983.

9.For the above reason, the appeal is dismissed, confirming the order dated 26.02.2019 made in M.C.O.P.No.40 of 2014. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

vkr

To

1. The Subordinate Court,
The Motor Accident Claims Tribunal,
Tiruchengode.

Copy To

The Section Officer,
V.R Section, High Court,
Madras.

+1cc to Mr.C.Paraneetharan, Advocate, S.R.No.3984

C.M.A.No.4753 of 2019

LN (CO)
CS/29/01/2021

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