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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.06.2021

CORAM

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.1719 of 2016

R.Balaji

... Appellant/Petitioner

..Vs..

1. M.D.Rahamathullah

2. M/s.United India Insurance Co. Ltd.,  
No.38, Anna Salai,  
Chennai - 2.

... Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and decree dated 28.11.2014 made in MACTOP.No.3190 of 2003 on the file of the Motor Accident Claims Tribunal, VI Judge, Small Causes Court, Chennai.

For Appellant : Mr.F.Terry Chellaraja

For 2<sup>nd</sup> Respondent : Mr.J.Michael Visuvasam

#### J U D G M E N T

(This Appeal has been taken up for hearing through Video Conferencing)

This appeal has been filed by the claimant challenging the impugned award dated 28.11.2014 passed by the Motor Accident Claims Tribunal IV Court of Small Causes, Chennai in MACTOP No.3190 of 2003 rejecting the claim of the appellant/claimant.

2. The Tribunal, under the impugned award has rejected the claim only on the ground that the appellant / claimant ought to have filed the claim under Section 163-A of the Motor Vehicles Act as he has not placed any evidence to prove the negligence of the driver of the insured vehicle. The subject vehicle has been insured with the second respondent/insurance company in this appeal.



3. Heard Mr.F.Terry Chellaraja, learned counsel for the Appellant / Claimant as well as Mr.J.Michael Visuvasam, learned counsel for the Second Respondent / Insurance Company.

4. The learned counsel for the Appellant drew the attention of this Court to the impugned award dated 28.11.2014 passed in MACTOP No.3190 of 2003 as well as the claim petition filed by the Appellant / claimant before the Tribunal and would submit that it clearly reveals that the claim petition was filed only under Section 163-A of the Motor Vehicles Act.

5. This Court has also perused and examined the impugned award as well as the claim petition filed by the appellant/claimant before the Tribunal. As rightly pointed out by the learned counsel for the Appellant/claimant, which is also not seriously disputed by the learned counsel representing the second respondent/insurance company, the claim petition was infact filed by the appellant/claimant only under Section 163-A of the Motor Vehicles Act when the negligence need not be proved and not under Section 166 of the Motor Vehicles Act. Hence, this Court is of the considered view that by non-application of mind, the impugned award has been passed rejecting the claim of the appellant/claimant. Hence, the matter will have to be remanded back to the Tribunal for fresh consideration on merits and in accordance with law by treating the claim petition as one filed under Section 163-A of the Motor Vehicles Act and not under Section 166 of the Motor Vehicles Act.

6. However, in view of the long pendency of this appeal and in view of the fact that the accident happened as early as in the year 2003 itself, a time frame will have to be fixed by this Court for early disposal of the claim petition on the matter getting remanded.

7. For the foregoing reasons, the impugned award dated 28.11.2014 passed by the Motor Accident Claims Tribunal, IV Judge, Court of Small Causes, Chennai in MCOP.NO.3190 of 2003 is hereby set aside and the matter is remanded back to the very same Tribunal for fresh consideration. The Tribunal is directed to pass appropriate orders on merits and in accordance with law by treating the claim petition as one filed under Section 163-A of the Motor Vehicles Act, after affording sufficient opportunity to the appellant/claimant as well as the respondents and also permitting them to adduce fresh evidence, if required by them, with regard to their respective contentions and dispose of the matter as expeditiously as possible, preferably within a period of four months from the date of receipt of a copy of this order.



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8. With the aforesaid direction, this appeal shall stand disposed of. No costs.

Sd/-  
Assistant Registrar(P & A)

//True Copy//

Sub Assistant Registrar

rgr

To

1.The VI Judge  
Small Causes Court,  
Motor Accident Claims Tribunal,  
Chennai.

Copy to:

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

+1cc to M/s.M.Malar, Advocate Sr No.30296

+1cc to Mr.J.Michael Visuvasam, Advocate Sr No.30522

C.M.A.No.1719 of 2016

SRA (CO)  
PR (22/10/2021)