



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 16.12.2020

Pronounced On : 21.01.2021

CORAM

THE HONOURABLE MR. JUSTICE K. MURALI SHANKAR

C.M.A(MD)No.490 of 2016

and

C.M.P. (MD)No.6289 of 2016

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The Divisional Manager,
M/s. New India Assurance Co.Ltd.,
Divisional Office,
248-B, Kamarajar Salai,
Madurai - 625 009.

: Appellant / 2nd Respondent

Vs.

1.Alagusundaram

: 1st Respondent/Claimant

2.R.Balu

: 2nd Respondent/1st Respondent

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the fair and decretal order passed by the Special Subordinate Judge for MCOP Cases, Madurai in M.C.O.P.No.1186 of 2014, dated 25.02.2016 as against the appellant and allow the appeal.

For Appellant	: Mr.N.Dilip Kumar
For R1	: Mr.A.Theethar
For R2	: No Appearance

J U D G M E N T

The Civil Miscellaneous Appeal has been filed under Section 173 of Motor Vehicles Act, 1988, challenging the award, dated 25.02.2016, made in M.C.O.P.No.1186 of 2014, on the file of the Motor Accident Claims Tribunal/Special Subordinate Judge for MCOP Cases, Madurai.

2.The Appellant/Insurer, who was made liable to pay compensation at Rs.1,66,760/- with interest at 7.5% per annum to the claimant, for the injury suffered by him, consequent to an accident occurred on 21.05.2014, challenged the liability mulcted on it.

3.The case of the claimant is that on 21.05.2014 at about 11.00 am, when he was traveling in a two wheeler bearing registration No. TN 20 AZ 7167 on Madurai to Trichy four way road, near Kunnankudipatti junction, he met with an accident with the car bearing registration No.TN 45 BY 0349 owned by the second respondent/first respondent, that the claimant had sustained serious



injuries and that the accident was occurred only due to the rash and negligent driving of the car driver.

4.The defence of the appellant/insurer is that on 21.05.2014, at about 11.00 am, when the driver of the second respondent/first respondent's car was proceeding in a normal speed on the Madurai to Trichy four way track from north to south near Kunnankudipatti, the claimant, who came in the opposite direction in a rash and negligent manner beyond the centre line, crossed the road and dashed against the car and caused the accident and that the accident was occurred only due to the rash and negligent driving of the claimant.

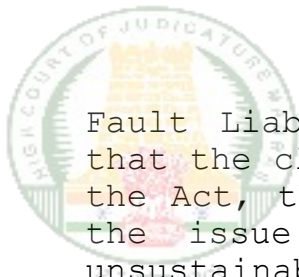
5.The appellant/insurer has also taken a specific stand that the claim petition filed under Section 163-A of the Motor Vehicles Act is legally not maintainable.

6.During enquiry before the Tribunal, the claimant has examined himself and two other witnesses as P.W.1 to P.W.3 respectively and exhibited five documents as Ex.P.1 to Ex.P.5. The second respondent/first respondent, who is the owner of the car bearing Registration No.TN-45- BY-0349 remained ex-parte. The Appellant/Insurer has examined three witnesses as R.W.1 to R.W.3 and exhibited four documents as Ex.P.1 to Ex.P.4.

7.The learned Trial Judge has framed a specific point for determination as to whether the claim petition filed under Section 163-A of Motor Vehicles Act, is maintainable and after considering the evidence available on record, came to the conclusion that the claim petition filed under Section 163-A of Motor Vehicles Act, is legally sustainable and passed the impugned award, dated 25.02.2016, mulcting the liability on the appellant/insurer and directing them to pay compensation of Rs.1,66,760/- with interest at 7.5% per annum. Aggrieved by the said award, the insurer has come forward with the present appeal.

8.The only point that arises for consideration is, as to whether the Tribunal erred in not considering the specific defence of the Appellant/Insurer that the accident was occurred only due to the rash and negligent driving of the injured/claimant and that thereby, the Tribunal failed to follow the law laid down by the Honourable Supreme Court in **National Insurance Company Vs. Sinitha** reported in **2012 (2) SCC 356**.

9.The learned counsel for the Appellant would strongly contend that the Tribunal failed to appreciate that the claim for compensation under Section 163-A of Motor Vehicles can be defeated by the Insurance Company by pleading and establishing that the accident occurred due to the negligence of the offending vehicle, that the Tribunal has failed to apply the prevailing law of the land that Section 163-A of the Motor Vehicles Act, is founded on the 'No



Fault Liability' principle and that the decision of the Tribunal that the claim application having been filed under Section 163- A of the Act, the claimant need not prove or plead negligence and hence, the issue of proof of negligence does not arise at all, is unsustainable.

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10.The learned counsel for the Appellant/insurer would further contend that the case in Crime No.179 of 2014 on the file of the Kottampatti Police Station, was registered only against the claimant/injured and that the Tribunal has failed to consider the evidence brought on record, which are very much sufficient to establish the negligence on the part of the claimant. No doubt, as rightly contended by the Appellant's side, FIR came to be registered only against the claimant/injured. But since the claim was laid under Section 163-A of Motor Vehicles Act, the learned Trial Judge has proceeded as if the claimant need not plead and prove the negligence of the driver of the vehicle involved in the accident and he has only to plead and prove that there was use of vehicle and that the accident had taken place due to use of the motor vehicle.

11.The main contention of the appellant is that the trial Court has failed to follow the legal dictum laid down by the Honourable Supreme Court in **Sinitha's** case.

12. No doubt, as rightly contended by the learned counsel for the Appellant, in **Sinitha's** case, the Hon'ble Apex Court took the view that under Sections 140 and 163 A of the Motor Vehicles Act, it is not necessary for a claimant to plead or establish that the accident, out of which, the claim arises suffers from wrongful act or neglect or default of the offending vehicle. The Hon'ble Supreme Court, interpreting Section 163-A of the Act, held that it is open to the owner or the insurer to defeat a claim made under Section 163 A of the Act by pleading and establishing through evidence a fault ground i.e., wrongful act or neglect or default. But, subsequently, the Hon'ble Supreme Court in **United India Insurance Company Limited Vs. Sunil Kumar and another** reported in (2014) 1 SCC 680, not agreeing with the judgment given in **Sinitha's** case, has referred the matter for a Larger Bench for determining as to whether in a claim proceeding under Section 163-A of Motor Vehicles Act, it is open for the insurer to raise the defence/plea of negligence. A Full Bench of the Hon'ble Supreme Court came to the conclusion and answered the question that it is not open for the insurer to raise any defence of negligence on the part of the victim in a proceedings initiated under Section 163-A of the Motor Vehicles Act vide judgment dated 24.11.2017. Since the decision in Sinitha's case has been overruled by the Hon'ble Supreme Court in **Sunil Kumar's** case, the arguments canvassed by the appellant/insurer are no more available to them.

13.Considering the above, the finding of the Tribunal that the claimant is entitled to file the claim petition under Section 163-A



of the said Act cannot be found fault with. Though the Appellant/insurer, in the memorandum of the appeal has challenged the compensation awarded at by the tribunal, the same was not pressed into service. Except the above, the insurer has not canvassed any other ground to impugn the award. Hence, this Court decides that the appeal, which is devoid of merits, is liable to be dismissed. Considering the other facts and circumstances, this Court further decides that the parties are to be directed to bear their own costs and the above point is answered accordingly.

14.In the result, this Civil Miscellaneous Appeal is dismissed and the award dated 25.02.2016, made in M.C.O.P.No.1186 of 2014 on the file of the Motor Accident Claims Tribunal/Special Subordinate Judge, Madurai, is confirmed. Parties are directed to bear their own costs. Consequently connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-III)

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Sub Assistant Registrar(CS)

das

To

1.The Motor Accident Claims Tribunal/
Special Subordinate Judge,
Madurai.

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

+1 CC to Mr.N.DILIP KUMAR, Advocate (SR-1687[F] dated 21/01/2021)

+1 CC to Mr.A.THEETHAR, Advocate (SR-1699[F] dated 21/01/2021)

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VB (04.02.2021) 4P 6C