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CMA.No.1958 of 2009

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.03.2022

CORAM

THE HON'BLE MRS.JUSTICE J.NISHA BANU

C.M.A.No.1958 of 2009

M/s.National Insurance Company Limited
152, Oppanakara Street,
Coimbatore – 1.

... Appellant/2nd respondent

Vs.

1.R.Bhaskaran .

..Respondent/Petitioner

2.R.Sakthivel

..Respondent/1st Respondent

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, to set aside the decree and judgment passed in MACT O.P.No.196 of 2004, dated 30.03.2005, on the file of the Motor Vehicle Accidents Claims Tribunal, III Additional Subordinate Judge, Coimbatore.

For Appellant : Mrs.N.B.Surekha

For Respondents : Mr.S.Gopinathan for R1
No appearance for R2



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JUDGMENT

This Civil Miscellaneous Appeal has been filed by the Insurance Company as against the award dated 30.03.2005.

2. The claimant/owner of the vehicle filed a claim petition claiming a sum of Rs.2,35,000/- as compensation in respect of the damages to the vehicle as a result of the accident that occurred on 07.09.2003 at 21.30 hours.

3. According to the claimant, the vehicle was driven by the second respondent herein/R.Sakthivel. The Tribunal passed the award holding that the accident occurred due to rash and negligent driving of the Toyota Qualis by the 2nd respondent/driver and also due to the negligent driving of the rider of the two wheeler and thereby concluded that both the drivers are responsible for the accident in the ratio of 50% : 50%.

4. In respect of quantum of compensation towards damages, the



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Tribunal found that the vehicle involved in the accident had been driven only after obtaining proper permission. As such, awarded Rs.66,000/- along with 9% interest to the claimant and directed the 2nd respondent/driver and the appellant-Insurance Company to jointly and severally pay the compensation.

5. The learned counsel for the appellant submitted that the claimant is not a third party with respect to the claim made under Section 165 and 166 of the Motor Vehicle Act and therefore, the Tribunal has no jurisdiction to try the case under the Motor Vehicles Act. In support of his submission, the learned counsel relied on the decision of Allahabad High Court in the case of ***The New India Assurance Company Ltd., Vs. IV Additional District Judge/Motor Accident Claims Tribunal, Azamgarh and another dated 30.01.2012 [CM.WP.No.20092 of 2000]***. The Allahabad High Court dealt with the issue of maintainability of claim petition filed by the owner of the vehicle in respect of damages caused in a road accident. The learned



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counsel for the appellant argued that in the above referred to decision, it is held that claim petition for compensation with regard to owner's vehicle does not come within the ambit and scope of Section 165 of the Act.

6. Heard both sides.

7. Section 165 (1) reads as follows:-

“A State Government may, by notification in the Official Gazette, constitute one or more Motor Accidents Claims Tribunals (hereafter in this Chapter referred to as Claims Tribunal) for such area as may be specified in the notification for the purpose of adjudicating upon claims for compensation in respect of accidents involving the death of, or bodily injury to, persons arising out of the use of motor vehicles, or damages to any property of a third party so arising, or both.”

8. The use of word “third party” is indicative of the legislative intention that the damage to owner's property is not within the ambit and



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scope of Claims Tribunal. Payment of compensation involving death or bodily injury or damages to any property or both to a third party is conceptually different to payment of such compensation to the injured person for damages to his own vehicle, under the Act.

9. A perusal of the decision of the Allahabad High Court in Civil Misc.Writ Petition No.20092 of 2000 would show that claim petition on behalf of owner in respect of damages caused to owner's vehicle is beyond jurisdiction of the Tribunal.

10. In the above referred to decision, the Allahabad High Court pointed out the observation made by the Apex Court in the case of ***Oriental Insurance Co.Ltd., Vs.Sunita Rathi (1998) 1 SCC 365*** that the liability of an insurance company is only for the purpose of indemnifying the insured against liabilities incurred towards a third person or in respect of damages to property.

11. In the light of the above decision, there is sufficient force in the



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argument of the appellant/Insurance Company that claim petition for compensation with regard to owner's vehicle does not come within the ambit and scope of Section 165 of the Act.

12. In the result, the Civil Miscellaneous Appeal is allowed. The order passed by the learned III Additional Subordinate Judge, Coimbatore in MACT O.P.No.196 of 2004 dated 30.03.2005 is set aside. No costs.

30.03.2022

msv/nvsri

To

1.The III Additional Subordinate Judge,
Motor Vehicle Accidents Claims Tribunal,
Coimbatore

2. The Section Officer,
VR Section, High Court, Madras.



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J.NISHA BANU, J.

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