



CMA.No.2824 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.11.2022

CORAM

THE HONOURABLE MS. JUSTICE P.T.ASHA

CMA.No.2824 of 2013

Raja

... Appellant/Petitioner

Vs.

1.Kesavan

2.The Manager,
ICICI Lombard General Insurance Ltd,
140, Chottabai Centre 2nd and 3rd floor,
Nungambakka High Court,
Chennai.

...Respondents / Respondents

PRAYER : Appeal filed under Section 173 of the Motor Vehicle Act , 1988 against the judgement and decree dated ..03.2013 and made in MACTOP No.402 of 2009 on the file of the Motor Accident Claims Tribunal, Thiruvannamalai (Principal Subordinate Judge, Thiruvannamalai).

For Petitioner : Mr.F.Terry Chellaraja

For Respondents : M/s.R.Sree vidhya [R.2]

: No appearance [R.1]



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JUDGEMENT

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The above application is filed by the claimant challenging the award passed by the Motor Accident Claims Tribunal, Thiruvannamalai (Principal Subordinate Judge, Thiruvannamalai) in MACTOP.No.402 of 2009 in and by which the learned Judge has dismissed the claim petition filed by the claimant on the ground that the policy is an Act only policy and does not extend coverage to the driver of the lorry. The facts in brief are as follows:-

2. The petitioner-appellant was driving the lorry bearing Registration No.TN 23 AE 2632 on 16.02.2009. While he was so proceeding at around 4.30 a.m. on the National Highway, (Tiruvannamalai to Tiruchy), a lorry proceeding in front of him had suddenly applied the brakes as a result of which the appellant had dashed against the lorry resulting in injuries to him. Therefore, he had filed the above claim petition seeking compensation of a sum of Rs.5,00,000/- under Section 163A of the Motor Vehicles Act, 1988.

3. The insurance company during the arguments had marked the copy of the policy as Ex.R.1 and contended that since it is an Act Only policy it would not cover the driver of the lorry. The Tribunal, therefore, dismissed the



claim petition. Aggrieved by the same the claimant is before this Court.

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4. Mr.F.Terry Chellaraja, learned counsel appearing on behalf of the claimant would submit that in the judgement reported in **2018 (2) TN MAC 149 (SC) - Shivaji and another Vs.Divisional Manager, United India Insurance Co.Ltd. and Others.**, the Hon'ble Supreme Court by following the judgement in **The United India Insurance Company Limited Vs. Sunil Kumar and Another - AIR 2017 SC 5710** held that the pleading of negligence cannot be raised in the case of a petition under Section 163A.

5. M/s.Sree Vidhya, learned counsel appearing on behalf of the insurance company would submit that the appellant in order to succeed in his claim filed under Section 163 A of the Motor Vehicles Act, 1988 has to not only prove that he is earning income below Rs.40,000/- per annum but also that he has suffered a permanent disability. She would submit that in the instant case, the appellant has not sustained a permanent injuries. Therefore she would submit that the order passed by the Tribunal has to be upheld if not on the deefense of an Act Only Policy.



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6. Heard the counsels on either side.

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7. By reason of the Judgement in the case of Shivaji and others referred supra the factum of negligence does not apply to a petition filed under Section 163 A of the Motor Vehicles Act, 1988 and here is a case where 2 vehicles are involved. Further coming to the next ground regarding permanent disability, a perusal of Ex.P.12, disability certificate would show that the petitioner has suffered a permanent partial disablement of 30% and the doctor has opined that the same has resulted in the petitioner's suffering a malunited fracture of the right foot, deformity in the left foot as well as the restricted movement which is definitely permanent in nature. Therefore, on this count also the petitioner's claim is maintainable. Therefore, the award passed by the Tribunal below dismissing the application of the claimant has to necessarily be set aside. Since the claim petition was dismissed on a preliminary point and as this Court now holds that the claimant is entitled to maintain the claim petition, the O.P. is remitted back to the Motor Accident Claims Tribunal, Thiruvannamalai (Principal Subordinate Judge, Thiruvannamalai) only for the purpose of arriving at the compensation payable to the appellant/petitioner on



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the basis of the evidence already available on record. The above Civil

Miscellaneous Appeal is therefore allowed and remanded back. No costs.

30.11.2022

Index : Yes/No
Internet: Yes/No
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To

1.The Motor Accident Claims Tribunal, Thiruvannamalai,
(Principal Subordinate Judge, Thiruvannamalai).

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



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P.T. ASHA, J,

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