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C.M.A.No.3713 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.11.2022

C O R A M

THE HONOURABLE Ms.JUSTICE P.T.ASHA

C.M.A.No.3713 of 2012

S.Manickavel

.. Appellant

-Vs.-

1. S.Babu

2. United India Insurance Company Limited,
Silinghai Building,
No.134, Greams Road,
Chennai 600 006

.. Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the judgment and decree in O.P.No.3218 of 2019 dated 06.03.2012 on the file of the Additional District Sessions Judge, II Fast Track Court, Chennai and praying to set aside the same.

For Appellant ... Ms.A.Subadra
For Respondent-1 Ex-parte
For Respondent-2 ... Ms.I. Malar

JUDGMENT

The petitioner before the Motor Accident Claims Tribunal, The Additional District and Sessions Judge, Fast Track Court No.II, Chennai – 1 in M.C.O.P.No.3218 of 2009 is the appellant before this Court.



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2. The appellant has taken out this appeal seeking enhancement of the compensation awarded by the Tribunal below.

3. The second respondent-Insurance Company has opposed the appeal on the ground that the appellant had filed the claim petition under Section 163A of the Motor Vehicles Act and the injury sustained by him does not constitute a permanent disablement as contemplated under Section 163A.

4. Ms.A.Subadra, learned counsel appearing on behalf of the appellant would vehemently contend that the fracture which the appellant had suffered is of a partial permanent nature and therefore, would fall within the provisions of Section 163A of the Motor Vehicles Act. She would refer to the schedule given under the Workmen's Compensation Act and the note given in schedule I Part II. She would also refer to the structured formula schedule, which is provided under Section 163A. She would therefore contend that the claim is very much maintainable and therefore considering



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the fact that a very low compensation has been granted, the appellant is entitled to an enhancement.

5. Per contra, Mrs.I.Malar, learned counsel appearing on behalf of the Insurance Company would submit that the claim itself is not maintainable as it does not satisfy the criteria of claims maintainable under Section 163A of the Motor Vehicles Act.

6. The argument put forward by Ms.Subadra cannot be countenanced for the simple reason that a reading of the provisions of Section 163A would clearly show that in order to fall within the provisions of Section 163A, there are 2 criteria that has to be satisfied:-

(a) The claimant earns less than a sum of Rs.40,000/- per year.

(b) It must be a case of death or permanent disability.

7. The term "permanent disablement" has not been defined in the Motor Vehicles Act, however the Explanation to Section 163A provides as follows:-



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Explanation.—For the purposes of this sub-section, “permanent disability” shall have the same meaning and extent as in the Workmen’s Compensation Act, 1923 (8 of 1923).

The Workmen's Compensation Act which is now rechristened as the Employee's Compensation Act also does not define the term "Permanent disability" but defines the term "Total disablement" and "Partial disablement" in Section 2 (l) and 2 (g) respectively. The proviso to Section 2(l) expounds on what could be deemed as a permanent total disablement. Schedule I lists out the injuries which are deemed to result in permanent total disablement (Part I) and list of injuries deemed to result in permanent partial disablement (Part II) and fixing the percentage of loss of earning capacity.

8. In the second schedule to the Motor Vehicles Act, permanent disability has been referred to under the head disability in non-fatal accident. It has been clearly stated that the term “permanent partial disablement” / "Permanent total disablement" shall be given the same meaning as set out in Schedule I of the Employee's Compensation Act (Workmen's Compensation



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Act). Therefore, the injuries in order to be construed a permanent disablement should fit into the niche of permanent disablement as listed in Schedule I of the Employee's Compensation Act.

9. If the injuries sustained by the appellant in the instant case is examined in the light of the schedule it would clearly show the same is not covered under any of the heads provided therein. Therefore, the very claim of the petitioner for compensation is not maintainable. However, the second respondent Insurance Company has not challenged the Award and what is before this Court is only an appeal seeking enhancement. Therefore, in the light above discussion, the appellant's claim has to be necessarily rejected. Accordingly, the civil miscellaneous appeal is dismissed. No costs.

16.11.2022

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To

1. The Additional District Sessions Judge, II Fast Track Court, Chennai
2. The Section Officer, V.R. Section, High Court, Madras.



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P.T.ASHA, J.,

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