IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.02.2022

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

C.M.A.Nos.1140 & 1141 of 2017

C.Subramani … Appellant/Petitioner (in both CMA's)

Vs.

The Oriental Insurance Company Ltd.,
Having D.O.Office at
Siva Complex, 2nd Floor,
22/C, Saradha College Road,
Salem – 7. … Respondent/Respondent(in both CMA's)

Common Prayer: Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree made in M.C.O.P.Nos.485 of 2008 & 260 of 2011 dated 25.06.2012 on the file of the Motor Accidents Claims Tribunal and Chief Judicial Magistrate, Salem.

For Appellant in both CMA : Mrs.N.R.Jasmine Padma

For Respondent in both CMA : Mr.K.Krishnamoorthy

C O M M O N J U D G M E N T

Both the Civil Miscellaneous Appeals have been filed by one C.Subramani, the Appellant, who also filed two separate Motor Accidents Claim Original Petitions in M.C.O.P.Nos.485 of 2008 & 260 of 2011, both of which, came up for consideration before the Chief Judicial Magistrate at Salem.

2.The short facts are that the petitioner's vehicle bearing registration No.TN-27-B-3191, which was insured with the respondent, at the time of the accident, had met with an accident, owing to which the Appellant herein suffered injuries and there was also damage to the aforementioned vehicle. The claims were filed taking advantage of Section 166 of the Motor Vehicles Act, 1988 read with Rule 3 of the Motor Claims Tribunal Rules, 1961.

3.The law is well settled that if a petition is filed under Section 166 of the Motor Vehicles Act, 1988, then the burden is shifted on the claimant to establish that the accident occurred and the injuries suffered were only owing to rash and negligent driving of the particular vehicle, which was insured and for which, the respondent / Insurance Company was liable to pay compensation. This burden has to be discharged by the claimant before the Tribunal. It is also well established that a petition filed under Section 166 of the Motor Vehicles Act cannot be coverted, post trial and after evidence had been recorded and after taking into consideration, whether to grant award, to a petition under Section 163-A of the Motor Vehicles Act, 1988. Both the provisions are mutually exclusive. Both in the instant case have been filed under Section 166 of the Motor Vehicles Act, 1988.

4.The learned Tribunal, in its jugment had very clearly found that the Insurance Policy, which was marked as Ex.P1 covered only personal expenditure for the owner / driver, only to an extent of Rs.2,00,000/-. It was also stated that an additional premium of Rs.100/- was paid. Therefore, it has been observed from the policy that the quantum of compensation had already been fixed by both the parties.

5.It was held that a claim under Section 166 of the Motor Vehicles Act, 1988 would not lie and therefore, the Tribunal had held that the claimant was not eligible for any relief or for any compensation to be granted.

6.The Petitioner / Appellant could very well have proceeded with the respondent directly on the strength of the insurance covered and could have sought to be compensated for injuries or for the damages caused to the vehicle.

7.Once an application is filed under Section 166 of the Motor Vehicles Act depending the nature of the policy, which has been stated above, the petitions have to suffered an order of dismissal.

8.The learned counsel appearing for the Appellant however, placed a caveat stating that liberty may be granted to the Appellant to go over to the Office of the respondent / Insurance Company. If such decision is taken by the Appellant, which I would leave to be decided exclusively by the Appellant then, there need not be any liberty granted. The Appellant may impress upon the respondent that he had spent time adjudicating the issue before the Tribunal and before this Court and I woud leave it to the privilege and wisdom of the respondent to examine that particular aspect.

9.The Appellant can seek enforcement of any clause under the said contract of the Insurance policy, which step is always open to the Appellant. Without expressing any further opinion on that particular aspect, this Civil Miscellaneous Appeals are dismissed. No costs.

10.It is made clear that the dismisal of the Appeals would not be a reason to preclude the Appellant from placing a claim before the respondent. The respondent may examine that claim of Appellant in the manner known to law and in accordance with the contract between the two parties.

SD/-
ASSISTANT REGISTRAR

// TRUE COPY //

SUB ASSISTANT REGISTRAR

kkn

To:-

The Motor Accident Claims Tribunal,
Chief Judicial Magistrate,
Salem.

+1cc to M/s.L.Chandrakumar, Advocate Sr.11484

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rp[co]
srg 22/03/2022