



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.03.2022

CORAM

THE HON'BLE MR.JUSTICE C.V.KARTHIKEYAN

C.M.A.NO.2159 OF 2017

AND

C.M.P.NO.11469 OF 2017

M/s.Reliance General
Insurance Company Ltd.,
Reliance House,
6th Floor, Nungambakkam,
Chennai - 600 006.

... Appellant/2nd Respondent

.Vs.

1. S.Suryakala

... 1st Respondent/Claimant

2. J.Sekar

... 2nd Respondent/1st Respondent

PRAYER:-

This Civil Miscellaneous Appeal has been filed under Section 173 of M.V. Act, 1988, against the award and decree dated 25.01.2017 made in M.C.O.P.No.4107 of 2013 on the file of the Motor Accidents Claims Tribunal, III Court of Small Causes, Chennai.

For Appellant : M/s.P.Vijayalakshmi
For Mr.S.Arunkumar

For Respondents : Mr.R.Nalliappan

JUDGMENT

The second respondent/the Reliance General Insurance Company Ltd., in M.C.O.P.No.4107 of 2013, on the file of the III Court of Small Causes, Chennai/Motor Accidents Claims Tribunal, is the appellant herein. They are aggrieved by grant of compensation for injuries suffered by the claimant S.Suryakala, when she was travelling as pillion rider in a motorcycle bearing registration No.TN 07 AM 1923, which was driven by her husband



J.Sekar, who was shown as the first respondent before the Tribunal and the second respondent before this Court.

2. The accident occurred on 06.07.2013 at around 5.40 p.m. near Murugan Kalyana Mandapam, in 100 feet road, Velacherry, when an unknown car dashed against the motorcycle, owing to which, as pillion rider, the claimant/Suryakala suffered injuries, which were as follows:

1. Fracture over left leg.
2. Fracture over left jaw.
3. Abrasions over Chin.
4. Contusion over Chest and hip.
5. Multiple injuries all over the body.

3. In connection with the accident, FIR had been registered as Ex.P5 and consequent to the investigation, final report had been filed by the Sub Inspector of Police, Guindy Traffic Investigation Police, which had been marked as Ex.R4. The Tribunal had observed, that the accident had occurred only owing to rash and negligent manner, in which, the unknown car was driven but still proceeded to grant compensation to be paid by the insurer of the motorcycle, in which, the claimant was the pillion rider.

4. When no negligence is attributed to the driver of the motorcycle, the insurer of the motorcycle cannot be directed to pay compensation or indemnify the owner for other damages caused to the motorcycle or injuries caused while travelling in the motorcycle. Ex.R4 is very clear that the accident occurred only due to rash and negligent manner, in which, the untraceable car was driven and dashed against the motorcycle. The appellant herein as insurer of the motorcycle bearing registration No.TN 07 AM 1923 cannot be directed to indemnify the compensation granted since, the motorcycle was not the cause for the accident.

5. It is claimed by the learned counsel for the first respondent that though the claim petition has been filed under Section 166 of the M.V.Act, 1988, this Court can convert it into a petition under Section 163A of M.V.Act, 1988. That is not possible. Both Section 166 M.V.Act 1988 and Section 163A M.V.Act 1988 are mutually exclusive and independent of each other. Under Section 166 of M.V.Act, 1988, a burden is cast to prove negligence and if the same is not proved, then the claim petition fails. Under Section 163A of M.V.Act, there is no need



to prove negligence and compensation is granted on the basis of second schedule to the Act on the basis of no-fault liability to third party.

6. In the instant case, negligence cannot be attributed to the motorcycle as is evident from the copy of the final report marked as Ex.R4.

7. The direction that the appellant must pay compensation is liable to be interfered with. The award of the tribunal is set aside. Accordingly, the civil miscellaneous appeal is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

sms

To

The III Judge,
The Motor Accidents Claims Tribunal,
The III Court of Small Causes,
Chennai.

Copy To:-

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

+1cc to Mr.R.Nalliappan, Advocate, S.R.No.21112
+1cc to Mr.S.Arunkumar, Advocate, S.R.No.21677

C.M.A.NO.2159 OF 2017 AND
C.M.P.NO.11469 OF 2017

BS (CO)
PBS/12/04/2022