



CMA No.691 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.07.2023

CORAM :

THE HONOURABLE **MR.JUSTICE SUNDER MOHAN**

C.M.A.No.691 of 2022
and C.M.P. No.4997 of 2022

Untied India Insurance Company Ltd.,
Rep.by its Branch Manager,
at No.2 Road, Mayiladuthurai Town,
Mayiladuthurai Taluk.

..

Appellant

Vs.

1.S.Rajkumar

2.S.Rajasekar

..

Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988 against the award and decree dated 08.04.2021 made in MCOP.No.233 of 2013 on the file of the Motor Accidents Claims Tribunal (Principal Sub Court), Mayiladuthurai.

For Appellant : Mr.D.Bhaskaran

For R1 : Mr.N.Alamelu Mangai



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JUDGMENT

WEB COPY This Civil Miscellaneous Appeal has been preferred by the appellant/Insurance Company questioning the impugned award of the Tribunal on the ground of liability.

2. The appellant / Insurance Company is the second respondent in MCOP.No.233 of 2013, on the file of the Motor Accidents Claims Tribunal / Principal Sub Court, Mayiladuthurai.

3. The first respondent, who is the claimant, has filed the said claim petition claiming a sum of Rs.5,00,000/- as compensation stating that while he was riding as a pillion rider in the motorcycle bearing Regn.No.TN49 AY 3969, his brother who is the rider /owner of the said two wheeler, drove the same in a rash and negligent manner and dashed against the motorcycle bearing Regn.No.TN31 K 7893 which was coming in the opposite direction and caused the accident. In the said accident, the first respondent sustained grievous injuries and was treated as inpatient in the hospital for nearly 13 days and hence prayed for awarding compensation.



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WEB COPY 4. The second respondent filed counter admitting the averments made in the claim petition. At the time of accident, the second respondent was possessing valid driving licence to drive the motorcycle. Moreover, the motorcycle was insured with the appellant/ Insurance company and therefore, the compensation if any awarded by the Tribunal has to be paid by the appellant / insurance company, as insurer of the motorcycle.

5. The appellant/Insurance company filed counter denying the averments made in the claim petition. They had stated that the claim petition is not maintainable for two reasons.

(a) The 1st respondent had filed the claim petition under Section 166 of the Motor Vehicles Act stating that the rider of the motorcycle in which he travelled as pillion rider was the offending vehicle and ran against another motorcycle. That the said claim petition was dismissed by the Tribunal stating that the claim petition is not maintainable under Section 166 of the Motor Vehicles Act.



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(b) As the rider of the two wheeler bearing Regn.No.

WEB COPY TN31 K 7893 is the tort feisor, the claim petition is not maintainable under Section 163-A since admittedly the 1st respondent was earning more than Rs.12,000/- per month.

6. The 1st respondent examined himself as PW1 and marked eleven documents Exs.P.1 to Exs.P.11. The respondents have not examined any witness nor marked any documents on their side.

7. The Tribunal, after considering the evidence and documents filed on the side of the appellant, awarded compensation by fixing the annual income of the 1st respondent as Rs.40,000/- holding that the 1st respondent is entitled to compensation under Section 163-A of the Act as the amount of Rs.12,000/- mentioned in the claim petition as monthly income was declared on the basis of instruction of the counsel.

8. Aggrieved over the said award, the appellant / Insurance Company has filed the present appeal.



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WEB COPY 9. The learned counsel appearing for the appellant submitted that the claim petition is not maintainable as the earlier claim petition filed by the 1st respondent under Section 166 of the Act was dismissed on the ground that the 1st respondent herein was not the tortfeasor. Instead of challenging the said award, the 1st respondent has preferred the instant claim petition under Section 163-A which is not maintainable since the income of the 1st respondent is more than Rs.40,000/- per annum. Hence, the learned counsel prayed for setting aside the award passed by the Tribunal.

10. Per contra, the learned counsel appearing for the first respondent contended that the earlier claim petition filed by the 1st respondent under Section 166 was dismissed. The 1st respondent is entitled to file claim petition under Section 163-A of the Act even though the rider of the two wheeler was not guilty of rash and negligent driving. The 1st respondent had also established before the Tribunal that though the income was stated as Rs.12,000/- per month in the claim petition, the said averment was made only on the instruction of his counsel and the said statement cannot be taken as



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basis to deny compensation under Section 163-A of the Act. The learned counsel therefore submitted that the compensation awarded by the Tribunal is just and reasonable and need not be interfered with.

11. Heard the learned counsel appearing for the appellant as well as first respondent and perused the materials available on record.

12. Though notice has been served on the second respondent and his name has been printed in the cause list, there is no representation for him either in person or through counsel.

13. The issues involved in the above appeal are -

(i) Whether the 1st respondent is entitled to compensation under Section 163-A of the Act after his claim petition filed under Section 166 was declined by the Tribunal earlier.

(ii) Whether the claim petition is maintainable even if the income of the 1st respondent admittedly is above Rs.40,000/- per annum.



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14. This court finds that the second claim petition filed under Section 163-A after dismissal of the earlier claim petition under Section 166 is not maintainable. The Tribunal, while dismissing the claim petition filed under Section 166 held that the rider of the two wheeler in which the 1st respondent was riding as a pillion rider was not the tortfeasor. In the earlier claim petition filed under Section 166, it is the specific case that the rider of the motor cycle was not the tortfeasor and accident occurred due to negligent riding of the rider of the other two wheeler bearing Regn.No.TN31 K 7893. The averments in the instant claim petition is contrary to the averments made in the earlier claim petition. The 1st respondent cannot blow hot and cold at the same breadth.

15. Be that as it may, in the claim petition, the 1st respondent has stated that his monthly income is Rs.12,000/-. He examined himself as PW1 and had admitted that his monthly income is Rs.9,000/-. In such circumstances, he is not entitled to compensation in terms of Section 163-A of the Act. This position has been reiterated by the Hon'ble Apex Court in **2004 (5) SCC 385**



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[Deepal Girishbhai Soni and Others v. United India Insurance Co. Ltd.,

Baroda. The relevant observations are as follows -

67. We, therefore, are of the opinion that Kodala has correctly been decided. However, we do not agree with the findings in Kodala that if a person invokes provisions of Section 163-A, the annual income of Rs.40,000/- per annum shall be treated as a cap. In our opinion, the proceeding under Section 163-A being a social security provision, providing for a distinct scheme, only those whose annual income is upto Rs.40,000/- can take the benefit thereof. All other claims are required to be determined in terms of Chapter XII of the Act.

16. Further, this Court in the judgment in CMA (MD) No.968 of 2016, observed as follows -

6. To maintain a petition under Section 163-A of the Act, the annual income of the deceased should be Rs.40,000/- or less. Even though the case reported in 2001 (5) SCC 175 [Oriental Insurance Co. Ltd. v. Hansrajhai V. Kodala, the Hon'ble Supreme Court held that the benefit under Section 163-A of the Act can be availed of by the claimant by restricting the claim on the basis of income at a sum of Rs.40,000/-, in 2004 ACJ934, the Hon'ble three Judges Bench of the Supreme Court held in para 67 that the proceedings under Section 163-A of the Act being a social security provision, only those whose annual income is upto Rs.40,000/- can take the benefit thereof. Therefore, it is obvious that the claimants fall outside the purview of the said provision and could not have taken the benefit thereunder.

17. Since, admittedly as per the claim petition and the evidence of PW1, the income of the 1st respondent exceeded Rs.40,000/- per annum, the claim petition filed by the 1st respondent under Section 163-A is not maintainable.



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The Tribunal erred in treating the annual income of Rs.40,000/- as a cap which is contrary to the judgment of the Hon'ble Supreme Court. Therefore, this court is of the view that the award passed by the Tribunal is erroneous and unsustainable, is liable to be set aside and accordingly, the same is set aside.

18. In the result, this Civil Miscellaneous Appeal is allowed by setting the award dated 08.04.2021 made in MCOP.No.233 of 2013 on the file of the Motor Accidents Claims Tribunal (Principal Sub Court), Mayiladuthurai. The appellant/Insurance Company is permitted to withdraw the award amount, if any deposited by them, alongwith interest and cost. No costs. Consequently, connected Miscellaneous Petition is closed.

25.07.2023

rg

Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No



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SUNDER MOHAN, J.

rgr

To

1. The Principal Subordinate Judge,
Motor Accidents Claims Tribunal,
Mayiladuthurai.

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

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and C.M.P. No.4997 of 2022

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