



C.M.A.No.3308 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.11.2023

CORAM :

THE HONOURABLE MR. JUSTICE **M. DHANDAPANI**

C.M.A.No.3308 of 2019

Harrish

...Appellant

Vs.

1. V.Dhamu
2. ICICI Lombard General Insurance Company Limited,
No.84, Wall Tax Road, Arihant Towers,
Chennai – 600 003.
3. Y.Praveen
(Since R3 remained exparte before the Tribunal, his presence may
be dispensed with.)
4. The Royal Sundaram Alliance Insurance Company Limited,
No.46, Whites Road, Chennai – 600 014. ...Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgement and Decree dated 19.09.2018 made in M.A.C.T.O.P.No.4163 of 2010 on the file of the Motor Accident Claims Tribunal, the V Court of Small Causes, Chennai.

For Appellant : Ms.M.Malar

For Respondents : No Appearance, for R1
: Mr.K.Poomalai, for R2
: Exparte, R3
: Mr.M.Krishnamoorthy, for R4



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JUDGEMENT

Aggrieved by the award passed by the Motor Accident Claims Tribunal, V Court of Small Causes, Chennai in M.A.C.T.O.P.No.4163 of 2010 dated 19.09.2018, the appellants have come up with this appeal.

2. It is the case of the appellant that, on 01.07.2010 at about 06.30 p.m., when the appellant was driving the Mahindra Renault Car bearing Rgn.No.TN-18-B-1548, owned by the 1st respondent, insured with the 2nd respondent, along with two others on the Cholavaram By pass Road near Balaji Water Supply, at that time, the driver of the Tata Indica Car bearing Regn.No.AP-26-AB-4519, owned by the 3rd respondent insured with the 4th respondent, came in the opposite direction in a rash and negligent manner and dashed against the car driven by the appellant, due to which, the appellant sustained injuries. Therefore, the appellant filed a petition claiming a sum of Rs.14,00,000/- as compensation. After contest, the Tribunal, vide impugned decree had directed the 2nd respondent insurance company to pay the appellant a sum of Rs.25,000/- under no fault liability. Challenging the same, the appellant is before this Court.



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3. Learned counsel appearing for the appellant submitted that, initially the claim petition was filed under Section 166 of the Motor Vehicles Act, 1988 (in short 'MV Act') and subsequently the same was amended into one under Section 163-A of the MV Act and when a claim petition is filed under Section 163-A, the negligence need not be proved by the appellant. While so, in the present case, instead of arriving at the compensation payable to the appellant as per the Second Schedule, the Tribunal had awarded a sum of Rs.25,000/- under no fault liability, by converting back the claim to Section 166 of the MV Act, which is not sustainable. Accordingly, she prayed for appropriate orders.

4. Per contra, the learned counsel appearing for the 4th respondent submitted that, admittedly, the FIR was registered as against the appellant, since he is the one who drove the vehicle owned by the 1st respondent insured with the 2nd respondent in a rash and negligent manner and dashed against the 3rd respondent vehicle, driven by its driver at the time of accident, while trying to cross the median, due to which the accident took place. Though the appellant has amended the claim petition from Section 166 to 163-A of the MV Act, the appellant has to satisfy the



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income criteria that was prescribed in the Second Schedule and his income should not be more than Rs.40,000/- per annum. However, in the present case, the appellant himself had admitted that, his monthly income is Rs.5,000/- which amounts to Rs.60,000/- per annum, hence, the claim petition is not maintainable under Section 163-A of the MV Act. After considering all the above said facts, the Tribunal had proceeded the case under Section 166 of MV Act and rule 3 of the MACT rules and awarded a sum of Rs.25,000/- under no fault liability, which is perfectly in order and the same does not warrants interference of this Court. Accordingly, he prayed for dismissal of this appeal.

5. On the above said contentions, heard learned counsel appearing for the 2nd respondent and perused the material documents placed on record.

6. It is the claim of the appellant that due to rash and negligent driving of the driver of the 3rd respondent vehicle, the accident had happened on 01.07.2010, in which the appellant sustained grievous injuries and thereby he filed a claim petition under Section 166 of MV



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Act and subsequently amended the provisions of law as Section 163 A and when the Tribunal had accepted the amendment sought for by the appellant, without proceeding under Section 163-A, the Tribunal on its own motion passed the order under Section 166 of the MV Act, which is *per se* illegal.

7. A perusal of the material documents placed on record, particularly the impugned decree reveals that, the FIR was registered as against the appellant and that, though the appellant had amended his claim petition from Section 166 to 163-A of the MV Act, it is seen from the findings rendered by the Tribunal that such an amendment had been allowed after a lapse of almost eight years from the date of the accident, more so, when the pleadings, evidence and arguments were almost completed. Therefore, the amendment ordered by the Tribunal cannot be sustained. Further, on the ground that the monthly income of the petitioner was averred to be Rs.5,000/-, which makes the yearly income at Rs.60,000/-, in view of the fact that the Second Schedule of the MV Act prescribes that if the yearly income is more than Rs.40,000/-, the petition u/s 163-A would not be maintainable, accordingly, on the above



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reasoning, the Tribunal, held that the petition u/s 163-A would not be maintainable and thought it fit to proceed with the case u/s 166 of the MV Act.

8. The Tribunal absolved the 3rd and 4th respondent, viz., the owner of the offending vehicle as also its insurer from any liability, while rendering a clear finding that the appellant was indeed the reason for the accident and the entire liability was fastened on the appellant, therefore, the 3rd and 4th respondents were not liable to pay any compensation.

9. Further, the Tribunal has held that when it comes to the vehicle, which was driven by the appellant of which the 1st respondent is the owner and the 2nd respondent is the insurer, the Tribunal had arrived a conclusion that the accident was caused on account of the rash and negligent driving of the appellant, who is alleged to be the son of the 1st respondent.

10. Once the Tribunal had come to the conclusion, based on the oral and documentary materials that the accident had occurred on account of the rash and negligent driving by the appellant, the insurance company cannot be fastened with any liability towards third party insurance, as the



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appellant was the son of the 1st respondent and only to the extent of Rs.25,000/- towards 'No Fault Liability', provided under Section 166 of MV Act and rule 3 of the MACT, the appellant would be entitled to compensation and, accordingly awarded the said sum. The said finding arrived at by the Tribunal, in the facts and circumstances as also the evidence adduced in this case is just and reasonable and this Court does not find any reason to interfere with the same.

11. Accordingly, this Civil Miscellaneous Appeal stands dismissed and the judgment and decree dated 19.09.2018 made in M.A.C.T.O.P.No.4163 of 2010 is confirmed. No costs.

16.11.2023

skt

Index : Yes / No
Speaking order : Yes / No
NCC : Yes / No

To

1.The Motor Accident Claims Tribunal, the V Court of Small Causes,
Chennai.

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



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M.DHANDAPANI, J.

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