



C.R.P.No.1428 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.01.2023

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

C.R.P.No.1428 of 2019
and C.M.P.No.9371 of 2019

Kasthuri @ A.Kasthuri Bai

... Petitioner

Vs.

1.P.T.Prem Satheesh

2.National Insurance Company Limited,
Division – III, 2nd Floor,
No.751, Anna Salai,
Chennai – 600 002.

... Respondents

Prayer : Civil Revision Petition is filed under Article 227 of the Constitution of India, against order and Decree dated 13.12.2018 made in M.P.No.4189 of 2018 in 7086 of 2013 on the file of Motor Accident Claims Tribunal, Chennai (II Court of Small Causes, Chennai).

For Petitioner : Mr.F.Terry Chella Raja

For Respondents : Mr.S.Vadivel
: for R2



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ORDER

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2.The short facts that are required to be considered are; the petitioner filed a claim petition before the Tribunal under Section 166 of the Motor Vehicles Act. The specific pleading that was made by the petitioner with regard to the manner in which the accident took place, is extracted hereunder:

On 01.07.2012 at about 07.30 PM hours the petitioner was traveled as a passenger in Maruthi 800 AC Car bearing regn no:TN-09-AQ-7240 from Thoothukudi at GST Road, Mahendra City Opposite at that time a Maruthi 800 Car bearing regn no:TN-09-AQ-7240 driven by its driver in a rash and negligent manner and came at a dangerous speed and dashed against hit the tree. The petitioner sustained grievous injuries. This accident occurred only due to the fault of the driver of Maruthi 800 Car bearing regn no:TN-



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09-AQ-7240.

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3.The Insurance Company contested the claim petition by filing detailed counter affidavit. The petition reached the stage of trial and the evidence was adduced both on the side of the petitioner as well as the Insurance Company. At that stage, the application for amendment in MP.No.4189 of 2018 came to be filed by the petitioner to amend the provision under which the claim petition was filed from Section 166 to Section 163A of the Motor Vehicles Act.

4.The above application was dismissed by the Court below by order dated 13.12.2018. Aggrieved by the same, the present Civil Revision Petition has been filed before this Court.

5.Heard Mr.F.Terry Chella Raja, learned counsel appearing on behalf of the petitioner and Mr.S.Vadivel, learned counsel appearing on behalf of the 2nd respondent.

6.The learned counsel for the petitioner submitted that the Motor Vehicles Act is a beneficial legislation and that even as per the pleadings made in the claim



petition, the negligence was attributed only to the driver of the car in which petitioner had traveled. Hence, even at the time when the claim petition was filed, instead of mentioning the provision as Section 163A of Motor Vehicles Act, by oversight, it was mentioned as Section 166 of the Motor Vehicles Act and this mistake should not be put against the petitioner and the petitioner should not be deprived of the compensation for the injuries sustained by her. In order to explain the scope of Section 163A of the Motor Vehicles Act, the learned counsel brought to the notice of this Court the judgment of the Apex Court in ***United India Insurance Co. Ltd. vs. Sunil Kumar and another*** reported in ***2017 (2) TN MAC 753 (SC)***.

7.The learned counsel for the petitioner further submitted that the Court below failed to consider the fact that in a case where the claim petition is filed under Section 163A of the Motor Vehicles Act, it is not necessary to prove negligence and the accident *per se*, will entitle the claimant for compensation. To reiterate the scope of a beneficial legislation like the Motor Vehicles Act, the learned counsel for the petitioner brought to the notice of this Court the following judgments :



a) ***Rajwati @ Rajjo and Others vs. United India Insurance Company Ltd. &***

Others reported in ***2022 LiveLaw (SC) 1016***.

b) ***Oriental Insurance Co. Ltd., vs. V.Bhuvaneswari*** reported in ***2019 (1) TN MAC 72 (DB)***.

8.Per contra, the learned counsel appearing on behalf of the Insurance Company submitted that the application for amendment was filed by the petitioner only to get over the evidence that was staring at the face of the petitioner. The learned counsel submitted that the petitioner filed the claim petition with a specific allegation of negligence on the part of the car driver. However, in the course of trial, it came to light that both in the FIR as well as in the claim form given by the 1st respondent, the negligence was attributed as against the van driver, who is alleged to have dashed on the rear side of the car. This evidence went against the very pleadings that were made by the petitioner and to get over the same, the amendment application was filed. The learned counsel therefore, contended that the Court below has properly appreciated the scope of the application and was perfectly right in dismissing the application and therefore, there are no merits in the Civil Revision Petition.



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9.This Court has carefully considered the submissions made on either side and also the materials available on record.

10.It is true that the Motor Vehicles Act is a beneficial legislation and the Court is expected to ensure payment of just and fair compensation to the aggrieved person and the Court should not be bogged down by technicalities as in the case of regular civil proceedings. This Court has absolutely no quarrel on the judgments that were cited by the learned counsel for the petitioner in this regard.

11.The petitioner knocked the doors of the Tribunal by filing the claim petition under Section 166 of the Motor Vehicles Act with a specific pleading that the accident took place due to the rash and negligent manner in which the car was driven. The petitioner had traveled in this car and had sustained injuries all over her body. With this specific pleading, the petitioner had claimed compensation as against the owner of the car, who is none other than the son of the petitioner and this car was covered by the insurance issued by the National Insurance Company Limited.



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12.The Insurance Company contested the claim petition by filing a counter affidavit. Even in the counter affidavit, the Insurance Company had specifically taken a stand that the petitioner has approached the Tribunal with a false claim, since both in the FIR as well as in the claim form, it was stated that the accident had occurred due to the negligence of the Driver of the unknown Mahindra Tourist Van and whereas, in the pleadings, a completely different picture has been given by the petitioner. The Insurance Company has taken a further stand to the effect that the owner of the vehicle is none other than the son of the petitioner and the mother and the son are attempting to misuse the claim and seek for compensation and accordingly, the Insurance Company had sought for the dismissal of the claim petition.

13.The case reached the stage of the trial and evidence was adduced both on the side of the petitioner as well as on the side of the Insurance Company. During the course of trial, the Insurance Company marked both the FIR as well as the claim form as EXs. R1 and R2. On carefully reading these two documents, it is clear that the entire negligence has been attributed to an unknown Mahindra



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Tourist van which is said to have dashed on the rear side of the car and in the said impact the car went over the barricade and had hit a tree. This evidence, went completely contrary to the pleading of the petitioner. The petitioner realized that the evidence was staring at her face and hence, conveniently filed an application in M.P.No.4189 of 2018 to amend the provision under which the claim was made from Section 166 of the Motor Vehicles Act to Section 163A of the Motor Vehicles Act.

14.The Court below on considering the amendment petition came to a definite conclusion that the evidence that was adduced, completely exposed the falsity of the case projected by the petitioner and therefore, the amendment application itself does not have any merits. The Court also gave a finding to the effect that the maximum cap of annual income permissible under Section 163A of the Motor Vehicles Act is only Rs.40,000/- and whereas, the monthly income of the petitioner was nearly Rs.10,000/- per month and this went much beyond the eligibility fixed under Section 163A of the Motor Vehicles Act. It is not necessary for this Court to go into this issue and it is enough to focus on the main ground that was put against the petitioner.



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15. The litigant who approaches the Court must come to the Court with clean hands. The petitioner came to the Court with a specific plea that there was negligence on the part of the car driver and as a result, she sustained injuries. If the petitioner did not want to go into the issue of negligence, it was always open to the petitioner to file the claim petition under Section 163A of the Motor Vehicles Act even in the beginning. If that had been done, there was no occasion for the Court to go into the issue of negligence and even the Insurance Company cannot raise a defence of negligence. The law on this issue has been settled by the Apex Court in the case of *United India Insurance Co. Ltd. vs. Sunil Kumar and another* referred *supra*.

16. The claim petition was filed in the year 2013 and the case reached the stage of trial and it was almost completed and at that stage it became evident that the evidence was going contrary to the pleading that was put forth by the petitioner. Immediately, the petitioner filed an application in the year 2018, seeking for an amendment to change the provision from Section 166 of the Motor Vehicles Act to Section 163A of the Motor Vehicles Act. By doing do, the



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petitioner was attempting to get over the adverse evidence gathered in the course of trial and made an intelligent move to bring the claim petition under Section 163A of the Motor Vehicles Act, so that, the Court need not go into the issue of negligence. Such an attitude can never be entertained, since every claimant, who finds that the evidence collected/gathered during trial is going against him, will resort to such a practice. Just because the Motor Vehicles Act is a beneficial legislation, that does not mean that claimants can be permitted to blow hot and cold and attempt to utilize the provisions of the Motor Vehicles Act to suit their convenience. If such an attitude is encouraged, it will go against the very purpose of the beneficial legislation which was enacted to pay just and fair compensation to genuine claimants.

17. In the considered view of this Court, the reason given by the Court below in refusing to entertain the amendment application, does not suffer from any illegality or infirmity warranting the interference of this Court in exercise of its jurisdiction under Article 227 of the Constitution of India and this Court does not find any merits in this Civil Revision Petition.



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18.In the result, this Civil Revision Petition is dismissed and the Motor Accident Claims Tribunal, Chennai is directed to dispose of MCOP No7086 of 2013, within a period of two months from the date of receipt of copy of this order and report compliance before this Court. It is further made clear that any observations made by this Court in this order will not have any bearing and the Court below shall proceed further to deal with the claim petition on its own merits and in accordance with law. No Costs. Consequently, connected miscellaneous petition is closed.

05.01.2023

Internet : Yes
Index : Yes
Speaking Order / Non Speaking Order
Neutral Citation Case : Yes / No
ssr

To

The Motor Accident Claims Tribunal, Chennai.
(II Court of Small Causes, Chennai)



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N. ANAND VENKATESH, J.

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