



C.M.A.No.4158 of 2

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.12.2023

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN
AND
THE HONOURABLE MR.JUSTICE N.SENTHILKUMAR

C.M.A.No.4158 of 2019

M.Veeraraj

...Appellant

Vs.

1.K.Kuppusamy

2.The Managing Director,
Tamil Nadu State Transport Corporation,
(Coimbatore Division-II) Ltd.,
Chennimalai road,
Erode District - 638 001.

...Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 19.04.2017 made in MCOP.No.136 of 2012 on the file of the MACT / IV-Additional District Court, Bhavani at Erode District.

For Appellant : Mr.Ma.P.Thangavel

For Respondents : Mr.M.Muralivinoth for R2

R1 - No such person

Mr.S.Arunkumar - Amicus Curiae



J U D G M E N T

(Judgment of the Court was made by R.SUBRAMANIAN, J.)

WEB COPY

The claimant is on appeal, aggrieved by the dismissal of the claim petition filed under Section 163-A of the Motor Vehicles Act on the ground that the claimant has pleaded an income of Rs.40,000/- per month. Section 163-A of the Motor Vehicles Act reads as follows:-

"163-A. Special Provisions as to payment of compensation on structured formula basis.-

(1) Notwithstanding anything contained in this Act or in any other law for the time being in force or instrument having the force of law, the owner of the motor vehicle of the authorised insurer shall be liable to pay in the case of death or permanent disablement due to accident arising out of the use of motor vehicle compensation, as indicated in the Second Schedule, to the legal heirs or the victim, as the case may be.

Explanation.- For the purposes of this sub-section, "permanent disability" shall have the same meaning and extent as in the Workmen's Compensation Act, 1923 (8 of 1923).

(2) In any claim for compensation under sub-section (1), the claimant shall not be required to plead or establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act or neglect or default of the owner of the vehicle or vehicles concerned or of



any other person.

(3) *The Central Government may, keeping in view the cost of living by notification in the Official Gazette, from time to time, amend the Second Schedule."*

2.The said provision is special provision, which enables victims of accidents to make a claim without proving negligence. The compensation allowed under the said provision is only the compensation that is set out in the Second Schedule and nothing more. If the victim claims compensation against the tortfeasor, the same has to be under Section 166. Difficulty arises only where victims of accidents claim that they are earning more than Rs.40,000/- per month to approach the Court under Section 163-A of the Motor Vehicles Act. The Tribunal, in the case on hand, has dismissed the claim petition because the claimant had stated that he is earning more than Rs.10,000/- per month i.e., 1,20,000/- per annum.

3. A similar issue arose before the Hon'ble Supreme Court in ***Deepal Girishbhai Soni and Others Vs. United India Insurance Co. Ltd., Baroda*** reported in ***(2004) 5 SCC 385***. The Hon'ble Supreme Court after considering the scope and ambit of Section 163-A and Section 166 held that



the law laid down by the Hon'ble Supreme Court in ***Oriental Insurance Co.***

Ltd., Vs. Hansrajbhai V.Kodala reported in (2001) 5 SCC 175 is correct.

However, the larger Bench of the Hon'ble Supreme Court disagreed with the conclusion of the ***Oriental Insurance Co. Ltd., Vs. Hansrajbhai V.Kodala*** to the effect that if the claimant chooses to invoke Section 163-A, the annual income of Rs.40,000/- shall be treated as a cap. The Hon'ble Supreme Court, however, clarified that the proceeding under Section 163-A being a social security provision, only persons who have annual income of less than Rs.40,000/- can take benefit there of and other claims are required to be determined under Section 12 of the Act, i.e., under Section 166.

4.The Hon'ble Supreme Court however, found that in ***Deepal Girishbhai Soni's case***, two claims petitions were filed, one under 163-A and other under 166 and both of them have been entertained. Both the Tribunal and the High Court had opined that the determination under Section 163-A is an interim award and the same would not preclude the claimant to proceed his claim under Section 166. The Hon'ble Supreme Court finally concluded that if a person is earning more than Rs.40,000/- per month, he has to necessarily go under 166 or Chapter 12 of the Act.



WEB COPY

5. In view of the dictum of the Hon'ble Supreme Court, we have to necessarily interfere with the order of the Tribunal, dismissing the claim under 163-A. The Tribunal ought to have treated it as one under 166 and disposed of the same in accordance with law. Therefore, this Appeal is **disposed of** and the award is set aside. The claim petition is remitted to the Tribunal namely, IV-Additional District Court, Bhavani, Erode with a direction to dispose it of as if it is a claim petition under Section 166. It will be open to the parties to raise additional pleadings if permissible and let in fresh evidence also. No costs.

6. Considering the fact that the claim petition is of the year 2012, the Tribunal will endeavour to dispose of the same within a period of six months from the date of receipt of a copy of this order. The parties are directed to appear before the Tribunal on 22.01.2024. Since we have remitted the matter the claimants will be entitled to refund of the court fee paid in the appeal.

(R.S.M., J.) (N.S., J.)
22.12.2023

kkn

5/7



Internet:Yes
Index:No
Speaking
Neutral Citation :No

C.M.A.No.4158 of 2



R.SUBRAMANIAN, J.
and
N.SENTHILKUMAR, J.

KKN

To:-

The Motor Accident Claims Tribunal,
IV-Additional District Court,
Bhavani, Erode District.

C.M.A.No.4158 of 2019



WEB COPY



C.M.A.No.4158 of 2

22.12.2023