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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :12.09.2023

CORAM

THE HON'BLE MR. JUSTICE P.VELMURUGAN

C.M.A.No.905 of 2018
and
C.M.P.No.7502 of 2018

New India Insurance Company Limited,
Represented By its the Divisional Manager,
No.F-6, Visitors Road, Block -2,
Neyveli Town Ship,

... Appellant

Vs.

1. Leo Anand

2. Rajasekaran ... Respondents

PRAYER:

Civil Miscellaneous Appeal filed under Section 173 of M.V.Act 1988 against the judgment and decree dated 05th day of December, 2017 made in M.C.O.P.No.5 of 2017 on the file of the Motor Accident Claims Tribunal (Subordinate Judge), Neyveli.

For Appellant : Mr.C.Ramesh Babu

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For R1 : Mr.P.Paramasiva Doss

R2 : Set Ex-parte before the Tribunal

JUDGEMENT

The claimant who is the first respondent herein, has filed the claim petition in M.C.O.P.No.5 of 2017 on the file of the Motor Accident Claims Tribunal, Neyveli, under Section 163(A) of the Motor Vehicles Act. The Tribunal, after enquiry, awarded a sum of Rs.1,17,080/- to the claimant. Aggrieved by the findings of the Tribunal, the Insurance Company has filed the present appeal.

2. Brief facts of the case are that on 23.10.2016 at about 7.30 pm, the first respondent/claimant drove the second respondent's motor cycle bearing Registration No.TN 91 Y 4314 from Mandarakuppam to Neyveli Township and at the time, one two wheeler was standing on the left side of the road. When the first respondent tried to stop the motor cycle, he lost his control, due to which, the accident had occurred.

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3. Learned counsel for the appellant/Insurance Company submitted that it is only a “personal Act policy” and it covers only for the owner-cum-driver, whereas the claimant/first respondent, who is the borrower of the vehicle from the owner and he is a third party to the policy, rode the vehicle and caused the accident, due to which, the claimant sustained injuries. Therefore, the “Insurance” is not covered for the claimant. Further, he submitted that Section 163(A) of Motor Vehicles Act would not be applicable to the case of the claimant. The claimant himself has stated that his monthly income is Rs.15,000/- per month. The first respondent/claimant's claim petition under Section 163(A) of the Motor Vehicles Act, is not maintainable, as the income of the claimant is only Rs.15,000/- per month. The Tribunal fixed the monthly income of the injured as Rs.8,000/-, which is beyond the jurisdiction of the Tribunal. The Tribunal failed to consider that the claimant is not entitled to invoke the provisions of Section 163(A) of Motor Vehicles Act. The Tribunal has fixed the notional income at Rs.8,000/- and awarded compensation. Therefore the impugned award passed by the Tribunal, is liable to be set aside.

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4. Learned counsel for the first respondent/claimant submitted that, though the income of the claimant is mentioned as Rs.15,000/-, the Tribunal can always restrict the same. There is no total bar that either the claimant can invoke Section 163(A) of Motor Vehicles Act, or Section 166 of the Motor Vehicles Act. But the claimant cannot invoke both the Sections simultaneously. The claimant has invoked Section 163(A) of Motor Vehicles Act only. The Hon'ble Supreme Court in the case of *Divisional Manager, Tata AIG General Ins. Company Limited Vs A.C.Jagadeesann and another, reported in 2023 ACJ 122,* held that the person who borrowed the vehicle and sustained injury due to accident ie., the injured stepped into the shoes of the owner and hence the Insurance company is liable to compensate the same with the limit of coverage of insurance. Hence, the appeal may be dismissed.

5. Heard both sides and perused the materials available on record.

6. Admittedly, the second respondent is the owner of the vehicle. The first respondent/claimant, who borrowed the vehicle from the second respondent, caused the accident, due to which he sustained injuries. The second respondent who is the owner of the vehicle and his vehicle was

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insured with the appellant/Insurance Company. It is the contention of the learned counsel for the appellant/Insurance Company that the "Insurance policy" is not covered for the claimant and hence, the appellant/Insurance Company is not liable to indemnify the loss caused by the person other than owner-cum-driver of the vehicle. It is the contention of the learned counsel for the first respondent/claimant that the person other than the owner, who drove the vehicle at the time of accident, sustained injury, can always steps into the shoes of the owner as per the decision of the the Hon'ble Supreme Court held in the case of *Divisional Manager, Tata AIG General Ins. Company Limited Vs A.C.Jagadeesann and another, reported in 2023 ACJ 122.* In this case, in the Insurance policy, it is clearly mentioned that it is a compulsory P.A covered for owner and driver and the limit of the policy is Rs.One lakh. Since the vehicle is insured with the Insurance Company, the insurer is liable to pay the accident of liability as fixed in the policy ie., Rs.one lakh. As per the above decision of the Apex Court, the person other than the owner who drove the vehicle at the time of accident, can always step into the shoes of the owner.

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7. The Tribunal fixed Rs.8,000/- as monthly income of the claimant which is against the statute. However, the accident took place in the year 2017 and admittedly Section 163(A)(iii) of Motor Vehicles Act clearly states that the ceiling limit has to be revised as and when required. But from the introduction of Section 163 of Motor Vehicles Act, till now, there is no revision in the structural formula. Therefore, considering the fact that the fixation of Rs.8,000/- as notional income is not wrong and the limit of policy up to Rs.One lakh, the respondent is entitled to get Rs.One lakh only and not more than that. Therefore, Appeal is dismissed with the abovesaid modification. The Insurance Company is permitted to withdraw the excess amount, if any already deposited by them, before the Tribunal. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

12.09.2023

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Index:Yes/No
Speaking Order: Yes/No
Neutral Citation: Yes/No

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To

1. The Subordinate Judge,
   The Motor Accident Claims Tribunal,
   Neyveli.

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

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P.VELMURUGAN, J.

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