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C.M.A.No.2403 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.04.2023

CORAM

THE HON'BLE MR. JUSTICE A.A.NAKKIRAN

C.M.A.No.2403 of 2017

Subathra

... Appellant

..Vs..

1. Subathra
2. United India Insurance Co., Ltd.,
146-N, Kumar Complex,
Annasalai, Tiruchengode,
Namakkal District.

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award and decree dated 16.02.2016 made in M.C.O.P.No.113 of 2014 on the file of the Motor Accident Claims Tribunal (Principal District Judge, Namakkal)

For Appellant : Mr.N.Mohanasundaram
for Mr.C. Paraneedharan

For Respondents : Mr.D.Bhaskaran for R2
No such person for R1



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JUDGMENT

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This Civil Miscellaneous Appeal has been preferred against the award and decree dated 16.02.2016 made in M.C.O.P.No.113 of 2014 on the file of the Motor Accident Claims Tribunal (Principal District Judge, Namakkal)

2. For the sake of convenience, the parties are referred to as per their ranking before the Motor Accident Claims Tribunal.

3. The case of the petitioner is that on 05.08.2013 at about 08.30 p.m., while the deceased Maheswari was riding a Scooty bearing Regn.No.TN-34-E-1243 on Tiruchengode to Namakkal main road, opposite to Azhagu Muthumarriamman Temple, Tiruchengode, by the left side of the road, one unidentified car driven by its driver in a rash and negligent manner, hit the vehicle of the deceased from behind and caused an accident, due to which , the deceased sustained head injury and died on the spot. Claiming compensation of a sum of Rs.10,00,000/-, the petitioner/claimant has filed a petition in MCOP.No.113 of 2014 before the Motor Accidents Claims



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Tribunal, Namakkal.

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4. Before the Tribunal, on the side of the petitioner, two witnesses were examined as P.W.1 and P.W.2 and seven documents were marked as Exs.P1 to P7. On the side of the second respondent / Insurance Company, neither witness was examined nor filed any document.

5. The Tribunal, after examining the witnesses and analyzing the materials available on record, has dismissed the claim petition.

6. Being aggrieved against the same, the petitioner / claimant has filed the present Civil Miscellaneous Appeal.

7. Heard the submissions made by the learned counsel for the appellant as well as the learned counsel for the second respondent.

8. The learned counsel for the petitioner / claimant has submitted that the Judgment and decree of the lower court are contrary to law, weight of



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evidence and probabilities of the case. It grossly erred in awarding a meager amount as compensation which is not in consonance with the facts and circumstances of the case. Though the Tribunal had given a finding that the accident occurred only due to the rash and negligent act of the husband of the claimant, according to Motor Accident Claims Rule who was a person while using the vehicle, the said accident occurred. It is applicable for Section 163(A) and had dismissed the petition. It has committed a serious error by dismissing the petition without considering that the claimant had lost her mother. Hence, the Judgment and award passed by the Tribunal is liable to be set aside and just and reasonable compensation may be awarded to the claimant. Hence, he prays to allow the Civil Miscellaneous Appeal.

9. The learned counsel for the second respondent / Insurance Company has submitted that the Tribunal has rightly considered the materials and evidences and has dismissed the petition and hence, the same does not require any interference by this Court. Hence, he prays for dismissal of the Civil Miscellaneous Appeal.



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10. A perusal of records shows that the claimant has not come forward with the clear entire facts about the accident and as per the complaint preferred by the complainant regarding the accident, the petitioner has not mentioned about the vehicle which caused the accident. This is a 'Hit and Run' case. Hence the claimant cannot claim her compensation under both the Sections 166 and 163-A. The owner of the vehicle cannot claim compensation from herself. In the absence of furnishing the details of the accident, that is the vehicle which cause the accident, claiming compensation from the respondent company is not acceptable. Since the claimant being the owner of the vehicle, she cannot claim compensation in the capacity of the claimant. Hence, the second respondent / Insurance Company is also not liable to pay any compensation to the petitioner.

11. Considering the above facts and circumstances of the case and upon perusing the records, the Tribunal has rightly dismissed the claim petition. Therefore, this Court is not inclined to interfere with the order passed by the Tribunal.



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12. In the upshot, the Civil Miscellaneous Appeal is dismissed.

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Index : Yes/No
Internet : Yes/No
Speaking / Non-speaking order
gv



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To
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1. The Motor Accident Claims Tribunal
(Principal District Judge, Namakkal)

2. The Section Officer,
High Court, Madras.



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A.A.NAKKIRAN., J.

gv

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