



C.M.A(MD)No.359 of 2015

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.04.2023

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.359 of 2015

and

M.P(MD)No.1 of 2015

The Divisional Manager,
United India Insurance Company Ltd.,
Divisional Office-1,
No.4, Prominent Road, Contonement,
Thiruchirapalli.

... Appellant/2nd Respondent

Vs.

1.Simson Allwyn

... Respondent/Claimant

2.Venkatesan

... Respondent/1st Respondent

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, to set aside the award passed by the learned III Additional Subordinate Judge/Motor Accident Claims Tribunal, Thiruchirapalli, dated 08.09.2014 in M.C.O.P.No.1728 of 2009.

For Appellant : Mr.N.Dilip Kumar

For R1 : Mr.N.Sudhagar Nagaraj

For R2 : No Appearance



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JUDGEMENT

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The present appeal has been filed by the insurance company challenging an award passed by the Motor Accident Claims Tribunal, Thiruchirappalli in M.C.O.P.No.1728 of 2009.

2. The injured claimant has filed a claim petition contending that he was a pillion rider in TVS-50. The bike owned and driven by the 1st respondent which came in the opposite direction, dashed against the TVS-50 and he sustained injuries. As per the claim petition, the monthly income of the injured claimant was mentioned as Rs.7,500/-. The claimant sought for a sum of Rs.2,00,000/- towards compensation.

3. The owner of the alleged offending vehicle had remained ex parte and the insurance company had filed a counter contending that the accident has happened only due to the rash and negligent driving of the injured claimant. They have also questioned the quantum of compensation as prayed for by the claimant.

4. The tribunal after considering the oral and documentary evidence, arrived at a finding that the accident has happened only due to



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the rash and negligent driving of the 1st respondent. Thereafter, proceeded to hold that the notional monthly income of the injured claimant would be Rs.4,500/-. Ultimately, the tribunal arrived at a final compensation amount of Rs.2,09,472/-. This award is under challenge by the insurance company.

5. According to the learned counsel appearing for the insurance company, the present claim petition has been filed under Section 163-A of the Motor Vehicles Act (hereinafter referred as MV Act). When an application is filed under the said provision, the annual income of the deceased or injured person should not exceed Rs.40,000/- per annum. In case, if the annual income exceeds Rs.40,000/-, the petition under Section 163-A of MV Act is not maintainable. The claimants have to resort to a claim petition under Section 166 of the MV Act. In the present case, admittedly, the injured claimant had contended that his monthly income is Rs.7,500/- which clearly exceeds the ceiling limit of annual income of Rs.40,000/- fixed for filing an application under Section 163-A of the MV Act. Therefore, according to the learned counsel appearing for the appellant, the said application is not maintainable.

6. Per contra, the learned counsel appearing for the respondent had



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contended that though the claimant had referred Rs.7,500/- as his monthly income, the tribunal has fixed the notional monthly income at Rs.4,500/-. Therefore, if the Court is of the view that the claimant has not established his monthly income of Rs.7,500/-, the Court is at liberty to reduce the notional monthly income to such a level, so that it falls below Rs.40,000/- per annum. In such a way, the application filed under Section 163-A of MV Act could be made maintainable. He further contended that though the application was filed under Section 163-A of MV Act, evidence was let in with regard to the negligence of the offending vehicle and the tribunal has conducted a trial and arrived at a finding that the 1st respondent alone is responsible for the accident. Therefore, ignoring the wrong quoting of the provision of law, this Court may consider this application under Section 166 of the MV Act and thereafter, confirm the award passed by the tribunal.

7. I have carefully considered the submissions made on either side.

8. The primary contention on the side of the learned counsel appearing for the appellant insurance company is that the object of Section 163-A of MV Act is for the benefit of the injured / legal heirs of the dead person to claim a compensation whose income is below Rs.



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40,000/- per annum. If the income of the claimant is above Rs.40,000/- per annum, naturally they have to resort to Section 166 of the MV Act.

The basic difference between Section 163-A and 166 of MV Act is that in a claim petition under Section 163-A, the burden is not upon the claimant to establish negligence on the driver of the offending vehicle. Therefore, it is clear that the object of the Section 163-A of MV Act is meant for the benefit of the poor people whose annual income is less than Rs.40,000/-.

9. The learned counsel appearing for the respondent had contended that in case if the Court arrives at a finding that the income is more than Rs.40,000/- per annum, the petition under Section 163-A can be converted into a petition under Section 166, especially in a case where evidence has been let in with regard to the negligence of the offending vehicle.

10. The Hon'ble Supreme Court in a judgment reported in **2004 (5) SCC 385 (Deepal Kirishbhai Soni & Others Vs. United India Insurance Co.Ltd., Baroda)** in Paragraph Nos.57 and 67 has held as follows:

“57. We, therefore, are of the opinion tht the remedy



for payment of compensation both under Sections 163-A and 166 being final and independent of each other as statutorily provided, a claimant cannot pursue his remedies thereunder simultaneously. One, thus, must opt/elect to go either for a proceedings under Section 163-A or under Section 166 of the Act, but not under both.

67.However, we do not agree with the findings in Kodala that if a person invokes provisions of Sections 163-A, the annual income of Rs.40,000/- per annum shall be treated as a cap. In our opinion, the proceeding under Section 163-A being a social security provision, providing for a distinct scheme, only those whose annual income is up to Rs.40,000/- can take the benefit thereof. All other claims are required to be determined in terms of Chapter XII of the Act.”

11. The issue that arises for consideration is what should be the course adopted by the tribunal where a claim petition is filed under Section 163-A, but the annual income mentioned in the claim petition exceeds Rs.40,000/-. The Hon’ble Supreme Court in a judgment reported in **2009 (13) SCC 710 (Ningamma & Another Vs. United India Insurance Company Limited)** has held that the Court’s duty is to award "just compensation" irrespective of the fact as to whether any plea in that behalf was raised by the claimant or not, even in cases where the claim



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petition does not mention Section 166 of MV Act. In the said case, the Hon'ble Supreme Court was pleased to hold that the claim petition filed under Section 163-A was not maintainable in view of the fact that the borrower of the vehicle was a tortfeasor and the annual income as claimed in the claim petition had exceeded Rs.40,000/-. But, the Hon'ble Supreme Court was pleased to remit the matter to High Court to consider the fact that even if the provisions of Section 163-A of MV Act was not applicable to the facts and circumstances of the present case, whether the said application could be considered under Section 166 of the MV Act. Therefore, it is clear that mere quoting of Section 163-A does not prevent the tribunal from considering the said application under Section 166 of the Act.

12. In cases, where the claim petition is filed under Section 166 of the MV Act and the claimants have not established the negligence on the part of the offending vehicle, the Court cannot *suo moto* treat the said application under Section 163-A and proceed to pass an award treating the annual income of Rs.40,000/- as a cap. Once the claimant has taken the burden upon himself to establish the negligence on the part of the offending vehicle, half way through, he cannot backtrack and try to convert the said claim petition under Section 163-A. That would defeat



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the very object of Section 163-A which has been introduced as a social security provision meant for the people below poverty line.

13. Based upon the deliberations supra, the legal proposition could be summarized as follows:

(a) A claimant cannot pursue the remedies under Section 163-A and Section 166 of the MV Act simultaneously. He has to opt/elect either one of the proceedings, but not the both.

(b) If the annual income of the injured claimant/deceased had exceeded Rs.40,000/-, a claim petition under Section 163-A is not maintainable unless there is a pleading in claim petition alleging negligence on the part of the driver of the offending vehicle.

(c) If the claimant had let in evidence and the tribunal is satisfied that the driver of the offending vehicle is negligent, then a claim petition filed under Section 163-A could be suo moto treated as a claim petition under Section 166 and an award could be passed under Section 166 of the MV Act without insisting upon a formal amendment.

(d) Section 163-A being a social security provision, the tribunal cannot treat Rs.40,000/- per annum as a cap for the award of compensation unless in the claim petition, the annual income is Rs.



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40,000/- or less than Rs.40,000/-.

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(e) If a claim petition is filed under Section 166, the claimant or the Court suo moto cannot convert the same into a claim petition under Section 163-A, just because the claimant was not able to establish the negligence on the part of the driver of the offending vehicle.

14. In the present case, the claimants have filed the claim petition under Section 163-A, but have pleaded and let in evidence with regard to the negligence on the part of the offending vehicle. The tribunal has also considered the said pleading and evidence and has arrived at a finding that the 1st respondent alone was responsible for the accident.

15. After fixing the notional income at Rs.4,500/- per month, the tribunal proceeded to fix the total compensation at Rs.2,09,472/-. In view of the above said facts, though the claim petition was filed under Section 163-A of the MV Act, the claimant has specifically pleaded about the negligence on the part of the offending vehicle in the claim petition. The same has also been rebutted in Paragraph No.3 of the counter filed by the insurance company. The claimant has examined P.W.1 to establish the negligence on the part of the offending vehicle. Therefore, the parties have understood the claim petition as one filed under Section 166 of the



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Act and the tribunal has proceeded to pass an award. Just because a wrong provision of law was quoted in the claim petition, this Court cannot hold that the award of the tribunal is liable to be set aside. Due to wrong quoting of the provision of law, relying upon the monthly income mentioned in the claim petition, this Court is not inclined to hold that the claim petition itself is not maintainable. The Hon'ble Supreme Court in the judgment cited supra in **2009 (13) SCC 710 (Ningamma & Another Vs. United India Insurance Company Limited)** had directed the High Court to consider the claim petition under Section 166 of the Act, in case, if the High Court finds that the claim petition is not maintainable under Section 163-A of the Act.

16. In view of the above said facts, this Court is not inclined to accept the said legal submission made on the side of the appellant that the claim petition filed under Section 163-A of MV Act is not maintainable merely on the ground that the annual income of the claimant is more than Rs.40,000/- per annum. The claimant having pleaded and let in evidence to establish the negligence on the driver of the offending vehicle, the award of the tribunal is legally sustainable. As far as quantum is concerned, a sum of Rs.2,09,472/- has been awarded which does not seem to be unreasonable or excessive in the light of the



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injuries sustained by the claimant. Therefore, there are no merits in the appeal. The Civil Miscellaneous Appeal stands dismissed. No costs.

Consequently, connected Civil Miscellaneous Petition is closed.

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NCC : Yes / No
Index : Yes / No
Internet : Yes / No

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To

- 1.The III Additional Subordinate Judge/
Motor Accident Claims Tribunal, Thiruchirapalli.
- 2.The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR ,J.

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Order made in
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