



CMA(MD).No.982 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 18.04.2023

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THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.982 of 2017
and
C.M.P(MD)No.10243 of 2017

The Branch Manager,
The New India Assurance Company Limited,
Swami Nellaiappar High Road,
Tirunelveli-1.

....Appellant/2nd Respondent

Vs.

Kanagaraj

... Respondent/Petitioner

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, to set aside the order and decree, dated 29.04.2013 made in M.C.O.P.No.80 of 2010 on the file of the Motor Accident Claims Tribunal, Subordinate Court, Sankarankovil.

For Appellant : Mr.K.Murugesan

For Respondent : Mr.J.C.Rathinavel Pandian



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J U D G M E N T

The present appeal has been filed by the insurance company challenging an award passed by the tribunal on the ground of liability.

2. According to the claimant, he is the owner cum operator of harvesting machine. After completing the harvesting work, while he was cleaning the harvesting machine, his right leg got caught into the machine and it got crushed. Later, the right leg was amputated below the knee portion. Hence, he had sought for a compensation of Rs.15,00,000/- from his own insurance company under Section 163-A of the Motor Vehicles Act.

3. The insurance company has filed a counter contending that the claimant being the owner himself, he is not entitled to seek any compensation from the insurance company. He had further contended that the accident has happened only due to the negligence on the part of the injured person and therefore, the question of invoking Section 163-A of Motor Vehicles Act would not arise. In paragraph no.8 of the counter,



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the insurance company has contended that the coverage is only to an extent of Rs.7,50,000/- and therefore, the present claim to an extent of Rs.15,00,000/- is not sustainable. The company has also challenged the quantum that is prayed for in the claim petition.

4. The tribunal after considering the oral and documentary evidence had arrived at a finding that the accident has not happened due to the negligence on the part of the claimant. Since the harvesting machine was insured with the respondent insurance company, the company is liable to pay compensation. The tribunal further found that the claimant has sustained 70% of disability and awarded a sum of Rs. 1,10,000/- towards a permanent disability, Rs.12,000/- towards fixing of artificial limb, Rs.55,600/- towards payment of medical expenses and Rs.2,00,000/- towards pain and suffering and Rs.90,000/- towards future loss of income and totally, a sum of Rs.5,98,750/- was awarded. This award is under challenge in the present appeal.



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5. According to the learned counsel appearing for the appellant, the injured claimant is the owner cum operator of the vehicle. The present claim petition has been filed under Section 163-A of the Motor Vehicles Act. In view of the judgment of the Hon'ble Supreme Court reported in **2020 (2) SCC 550 (Ramkhiladi & Another Vs. United India Insurance Company & Another)**, the owner of the vehicle cannot maintain an application under Section 163-A of the Motor Vehicles Act. Therefore, he contended that the award passed by the tribunal is liable to be set aside and the company may be exonerated.

6. Per contra, the learned counsel appearing for the respondent had contended that even assuming that the claim petition under Section 163-A is not maintainable, the premium has been paid towards personal accident policy. According to the learned counsel appearing for the respondent, as per the policy, they are liable to pay a sum of Rs.7,50,000/- towards compensation under the compulsory personal accident coverage. He further pointed out paragraph no.8 of the counter, in which the insurance company has taken a defence that they will be



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liable only up to the extent of Rs.7,50,000/- and not for Rs.15,00,000/- as prayed for. Therefore, the learned counsel for the respondent had contended that the award passed by the tribunal for an extent of Rs.5,98,750/- is within Rs.7,50,000/- and therefore, the award may be confirmed.

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

8. Admittedly, the injured claimant is the owner cum operator of the harvesting machine and without the involvement of any other vehicle, he had got injured while operating the said vehicle and his right leg got amputated below the knee. Therefore, it is clear that the application under Section 163-A of the Act is not maintainable in view of the judgment of the Hon'ble Supreme Court reported in **2020 (2) SCC 550 (Ramkhiladi & Another Vs. United India Insurance Company & Another)**.

9. In the judgment of the Hon'ble Supreme Court cited supra, after holding that 163-A application is not maintainable by the owner of the



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vehicle, the Hon'ble Supreme Court has proceeded to hold that the owner would be entitled to receive compensation under personal accident coverage up to the extent of the amount that is stated in the policy. In the present case, a perusal of Exhibit R.1 policy indicates that the limits of liability of the insurance company is up to Rs.7,50,000/-. In paragraph no.8 of the counter, the insurance company has also contended that the insurance coverage as per policy is only to an extent of Rs.7,50,000/-. Therefore, it is clear that even under the personal accident coverage policy, the coverage is up to an extent of Rs.7,50,000/-. A perusal of the award of the tribunal indicates that the tribunal has proceeded to award a sum of Rs.5,98,750/- which is for below Rs.7,50,000/- for which the company is liable as per Exhibit R.1 policy.

10. A perusal of the award further indicates that the injured claimant has sustained grievous injuries and his right leg has been amputated below the knee. The tribunal has arrived at a disability at 70%. Therefore, I do not find any reason to interfere in the quantum of award.



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11. In view of the above said reasons, there are no merits in the appeal. Hence, this Civil Miscellaneous Appeal stands dismissed. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

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

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To

- 1.The Motor Accident Claims Tribunal,
Subordinate Court,
Sankarankovil.
- 2.The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR,J.

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Judgement made in
C.M.A(MD)No.982 of 2017

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