



C.M.A.(MD).No.611 of 2020

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.06.2023

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.611 of 2020

and

C.M.P(MD) No.7370 of 2023

M/s. United India Insurance Company Ltd.,
7A West Veli Street,
Madurai,
Madurai District.

... Appellant/2nd Respondent

-VS-

1. M. Pandeewaran
2. Navaneethakrishnan
3. R.Selvaganesh

... 1st Respondent/Petitioner
... 2nd Respondent/1st Respondent
... 3rd Respondent/3rd Respondent

4. The Oriental Insurance Company Ltd.,
K.J.R Complex,
North Veli Street,
Madurai, Madurai District.

... 4th Respondent/4th Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, challenging the judgment and decree dated 26.08.2019 made in M.C.O.P.No.611 of 2016, on the file of the Motor Accidents Claims Tribunal/ Special Sub-Court, Madurai.



C.M.A.(MD).No.611 of 2020

WEB COPY

For Appellant : Mr.I.Suthakaran

For Respondents : Mrs.Vanitha – for R1
: Mr.C.Jawahar Ravindran – for R4
: No appearance – for R2 and R3

J U D G M E N T

The present Civil Miscellaneous Appeal has been filed by the Insurance Company challenging the award passed by the Motor Accidents Tribunal/ Special Sub-Court, Madurai in M.C.O.P.No.611 of 2016.

2. According to the injured claimant, he was travelling as a loadman in a Tata Ace vehicle owned by the third respondent. On 31.01.2016, at about 03.30 p.m, when he was travelling as a loadman, the bus owned by the first respondent and insured with the second respondent was driven in a rash and negligent manner and stopped the bus without giving any signal and therefore, the Tata Ace vehicle had dashed against the rear side of the bus and in the said accident, the claimant has sustained grievous injuries. Hence, he prayed for a sum of Rs.5,00,000/- (Rupees Five Lakhs only) towards compensation as against the 4th respondent.



C.M.A.(MD).No.611 of 2020

WEB COPY

3. The second respondent who is the Insurance Company of the bus had filed a counter contending that the accident has taken place only due to the rash and negligent driving on the part of the driver of the Tata Ace vehicle and therefore, they are not liable to pay any compensation.

4. The Tribunal, after considering the oral and documentary evidence, arrived at a finding that the Tata Ace vehicle had dashed against the parked bus and therefore, the accident has taken place solely due to the rash and negligent driving on the part of the driver of the Tata Ace vehicle, however, proceeded to award a compensation to a tune of Rs.3,35,000/- (Rupees Three Lakhs Thirty Five Thousand only). The Tribunal had awarded a compensation invoking Section 163-A of the Motor Vehicles Act., and directed the Insurance Company of the Bus to pay a compensation of Rs.2,50,000/- (Rupees Two Lakhs Fifty Thousand only). The balance amount of Rs.85,000/- shall be paid by the owner of the Tata Ace Vehicle. This award is under challenge in the present appeal filed by the Insurance Company of the bus.



C.M.A.(MD).No.611 of 2020

WEB COPY

5. According to the learned counsel appearing for the appellant, though the claimant has contended that the accident has taken place only due to the rash and negligent driving on the part of the driver of the bus, ultimately, the Tribunal has arrived at a finding that the accident has taken place only due to the rash and negligent driving on the part of the driver of the Tata Ace vehicle. Admittedly, the said Tata Ace vehicle was not insured on the date of accident. There is no relationship whatsoever between the appellant/Insurance Company and the said Tata Ace Vehicle. When there is no liability upon the owner of the bus, and that there is no negligence on the part of the driver of the bus, the insurer of the said bus should not have been directed to satisfy the award to an extent of Rs.2,50,000/- (Two Lakhs Fifty Thousand only). Hence, he prayed for exonerating the Insurance Company.

6. Per contra, the learned counsel appearing for the claimant had contended that the claim petition was filed under Section 166 r/w 163-A of the M.V.Act. Therefore, even though the Tribunal has arrived at a finding that the accident has taken place only due to the rash and negligent driving on the part of the driver of the Tata Ace vehicle, has proceeded to pass an award



C.M.A.(MD).No.611 of 2020

under Section 163-A of M.V.Act. When the claim petition is filed under Section 163-A of the M.V.Act, the claimant need not prove the negligence on the part of the offending vehicle. Therefore, even assuming that there is no negligence on the part of the driver of the bus, the insurer is liable to pay the compensation. Since the claim petition has been filed under Section 163-A of the Act, the balance compensation amount has been directed to be paid by the owner of the Tata Ace vehicle. Therefore, there is no illegality or infirmity in the order passed by the Tribunal and the same may be confirmed.

7. I have carefully considered the submissions made by the learned counsel on either side and perused the material on records.

8. A perusal of the claim petition indicates that the same has been filed under Section 166 of the M.V.Act r/w 163-A of the M.V.Act. In column No.6 of the claim petition, it is mentioned that the injured claimant was earning a sum of Rs.15,000/- (Rupees Fifteen Thousand only) per month. In the judgment of the Hon'ble Supreme Court reported in **2004 (5) SCC 385 (Deepal Girishbhai Soni and others Vs. United India Insurance Company limited)**, in paragraph No.57, it has been categorically held that the claim



C.M.A.(MD).No.611 of 2020

petition can be filed either under Section 163-A or Section 166 of M.V.Act.

The claimant cannot pursue both the remedies. The claimant ought to have elected to go for either one of the proceedings. However, strangely, the Tribunal has chosen to number the said application which has been filed under Section 166 r/w Section 163-A of the M.V.Act.

9. The Hon'ble Supreme Court in the same judgment cited supra, in paragraph No.67, has held that the claim petition under Section 163-A of the M.V.Act can file only when the annual income does not exceed Rs.40,000/-. In case, the annual income is Rs.40,000/- or more, the claim petition can be filed only under Section 166 of the Motor Vehicle Act. Therefore, it is clear that the claimant cannot make an attempt to file the claim petition invoking both the provisions of law.

10. The Tribunal, after considering the oral and documentary evidence, has rejected the contention of the claimant with regard to the negligence and arrived at a finding that the accident has taken place only due to the rash and negligent driving on the part of the driver of the Tata Ace vehicle, in which, the injured claimant is said to be a loadman. Once the Tribunal has chosen to



C.M.A.(MD).No.611 of 2020

fix the negligence invoking Section 166 of the M.V.Act. Thereafter, the Tribunal cannot proceed under Section 163-A of the Act to pass an award utilizing the structural formula under the M.V.Act. In the present case, negligence has been fixed upon the driver of the Tata Ace vehicle, the appellant is not the insurer of the said vehicle. Therefore, the insurer is no way responsible to indemnify the owner of the Tata Ace Vehicle. In view of the above said facts, the appellant Insurance Company is not liable to pay any compensation whatsoever.

11. The fact that the claimant had got injured in the said accident while he was travelling in a Tata Ace vehicle as a loadman is not in dispute. The said Tata Ace vehicle has not been insured at the relevant point of time. Therefore, the entire liability would be upon the owner of the Tata Ace vehicle to satisfy the award. Therefore, the quantum of award of the Tribunal is hereby confirmed. But as far as the liability is concerned, the appellant Insurance Company is exonerated and the entire liability is fixed upon the third respondent in the claim petition/ the third respondent in the appeal.

12. Pending appeal, C.M.P(MD) No.7370 of 2023 has been filed to



C.M.A.(MD).No.611 of 2020

delete Section 166 of the Act in the claim petition. The claimant has chosen to file an application under Section 166 of the Act r/w Section 163-A of the M.V.Act and he cannot seek to withdraw Section 166 of the M.V.Act. Therefore, C.M.P(MD) No.7370 of 2023 is dismissed.

13. With the above said observation, this Civil Miscellaneous Appeal is partly allowed to the extent as stated above. No costs.

28.06.2023

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

To

1. The Motor Accidents Claims Tribunal/
Special Sub-Court, Madurai.
2. The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



C.M.A.(MD)No.611 of 2020

R.VIJAYAKUMAR,J.

ebsi

C.M.A.(MD)No.611 of 2020



WEB COPY



C.M.A.(MD).No.611 of 2020

28.06.2023