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C.M.A.Nos.3272 and 3275 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.12.2024

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.Nos.3272 and 3275 of 2024

P.Madhankumar ... Appellant in C.M.A.No.3272 of 2024

V.Ammasi ... Appellant in C.M.A.No.3275 of 2024

Vs.

1.B.Ithiyath Sheriff

2.Bharti AXA General Insurance Company Limited,
N.No.4B, O.No.166-167, Second Floor,
Veerabathra Street,
Opp.Hotel Oxboard,
Erode.
Now the Company merged with ICICI,
The Manager,
ICICI Lombard General Insurance Company Limited,
Nos.84 and 85, 1st Floor, Hariant Plaza,
Wall Tax Road,
Chennai-600 003.

... Respondents in both appeals



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COMMON PRAYER : Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988, against the common judgment dated 21.09.2023 made in M.C.O.P.Nos.680 and 681 of 2019 on the file of the Exclusive Motor Accident Claims Tribunal (Special Subordinate Court), Erode.

In both appeals

For Appellant : Mr.C.Prabakaran

For Respondents : Mrs.R.Sreevidhya for R2

COMMON JUDGMENT

These Civil Miscellaneous Appeals have been filed against the common award dated 21.09.2023 passed in M.C.O.P.Nos.680 and 681 of 2019 by the Motor Accident Claims Tribunal (Special Subordinate Court), Erode.

2. The appellants/claimants sustained injuries in a road traffic accident on 26.06.2017. While they were riding their motor cycle bearing Reg.No.TN 33 BK 3841, the vehicle driven by the first respondent bearing Reg.No.TN 33 AS 9859 coming from opposite direction dashed against the



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appellants vehicle, causing serious injuries to the appellants herein. The appellants took first aid and admitted in Senthil Multi-Speciality Hospital, Erode, and took treatment as in-patient. The appellants were aged about 29 and 26 years respectively and they are earning a sum of Rs.15,000/-. Claiming compensation of Rs.10,00,000/-, the appellants have filed the claim petitions before the Tribunal.

3. The first respondent/owner of the vehicle did not appear before the Trial Court and was set *ex-parte*. The claim petitions were contested by the second respondent/Insurance Company under whom the first respondent's vehicle was insured. The Tribunal, after going through the materials available on record and the submissions made on both sides, dismissed the claim petitions, against which, the present appeals have been filed.



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4. Heard the learned counsel appearing for the appellants and the learned counsel appearing for the second respondent in both the appeals.

5. Admittedly, the appellants have filed the claim petitions under Section 163(A) of the Motor Vehicles Act. It is not in dispute that Ex.P1/FIR in Crime No.357 of 2017 was registered under for the offence under Sections 279 and 337 IPC and the Investigating Officer also visited the place of occurrence. The vehicles involved in the accident were sent to the Motor Vehicles Inspector for inspection. Ex.P5/M.V.I. Report also stated that the accident occurred due to mechanical defects of the vehicle. The charge sheet was also marked as Ex.R1. It is also pertinent to note that the appellants were prosecuted for the offence under Sections 279 and 337 IPC and as per Ex.R2/ judgment copy of S.T.C.No.682 of 2017, the appellants admitted their guilt, based on which, they were convicted. When that being so, the claim petitions were filed by the appellants/claimants under Section 163(A) of the Motor Vehicles Act where the negligence needs to be proved.



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Further, the claim petition can be entertained only for the claimants, who have earned Rs.40,000/- per annum. In the claim petition, the appellants/claimants claimed that their monthly income is Rs.15,000/- and therefore, it is clear that the petition under Section 163(A) of the Motor Vehicles Act is not applicable to be invoked by the claimants. The Tribunal, after considering the judgment of the Hon'ble Apex Court in the case of ***Deepal Girish Bhai Soni vs. United India Insurance Company Limited*** reported in ***(2004 (2) T.A.C.289)***, has come to the conclusion that the appellants were earning more than a sum of Rs.40,000/- per annum and Section 163(A) will not be applicable if the annual income of the person is found to be more than Rs.40,000/- per annum and thereby, the Tribunal dismissed the claim petitions filed by the appellants. Since the appellants have admitted their monthly income as Rs.15,000/-, Section 163(A) of the Motor Vehicles Act cannot be invoked by them and therefore, this Court is not inclined to interfere with the impugned common award passed by the Tribunal.



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6. Accordingly, these Civil Miscellaneous Appeals are dismissed.

There shall be no order as to costs.

16.12.2024

NCC : Yes / No

Index : Yes / No

Speaking Order : Yes / No

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To

1. The Motor Accident Claims Tribunal,
Special Subordinate Court, Erode.

2. The Section Officer,
V.R. Section,
High Court,
Chennai.



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M.DHANDAPANI, J.

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