IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.04.2024

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

C.M.A.No.2406 of 2022
and C.M.P.No.18702 of 2022

National Insurance Co. Ltd.,
K.K.Road, Manthakarai,
Villupuram.
Now at,
Motor 3rd Party Claim Cell,
No.66, Greams Road,
Chennai – 600 006. .. Appellant

Vs.

1.S.Thangavelu

2.K.Sankar .. Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, praying to allow the Civil Miscellaneous Appeal by setting aside the order and decreetal order dated 03.01.2022 in M.C.O.P.No.306 of 2018 passed by the III Additional District Judge, MACT – Villupuram @ Kallakurichi, and allow the above Civil Miscellaneous Appeal.

For Appellant : Mr.P.Sankaranarayanan

For R1 : Mr.T.Dhanasekaran

JUDGMENT

This appeal has been filed by the Insurance Company challenging the award passed by the learned III Additional District Judge, Motor Accident Claims Tribunal, Villupuram @ Kallakurichi, in M.C.O.P.No.306 of 2018 on 03.01.2022.

2.The 1st respondent claimant was riding a two wheeler belonging to the 2nd respondent on 04.11.2015 and at about 10.00 P.M., when the vehicle was crossing the Showroom, a dog suddenly crossed the road and as a result, the claimant lost the control of the vehicle and the vehicle hit against the tree and the claimant fell down and sustained grievous injuries. The claimant sustained right frontal & temporal lobe cerebral cortical hemorrhagic contusions, right temporal thin epidural hematoma and thin arachnoid hemorrhage in anterior interhemispheric fissure. The disability of the claimant was also assessed by the Medical Board at 30% under Ex.C1. It is under these circumstances, the claim petition came to be filed before the Tribunal seeking for payment of compensation.

3.The Tribunal on considering the facts and circumstances of the case and on appreciation of oral and documentary evidence, came to a conclusion that the claimant is the tort-feasor and he had driven the vehicle belonging to 2nd respondent herein. After having rendered such a finding, the Tribunal came to a conclusion that since the claim petition has been filed under Section 163(A) of the Motor Vehicles Act, negligence has no role to play and hence, the total compensation of Rs.2,82,429/- was fixed as follows:

Sl. No.	***Heads***	***Calculations***
1.	Compensation for injuries Rs.3300 X 12 X 30/100 X 13	Rs.1,54,440.00
2.	Amount towards pain & sufferings	Rs.50,000.00
3.	Amount towards transport charges	Rs.10,000.00
4.	Amount towards attendar charges	Rs.10,000.00
5.	Amount towards loss of income	Rs.10,000.00
6.	As per Ex.P5 Medical bills	Rs.47,989.00
	Total	Rs.2,82,429.00

4.The above compensation was directed to be paid with 7.5% interest per annum.

5.The Insurance Company aggrieved by the award passed by the Tribunal has filed the present appeal before this Court.

6.Heard the learned counsel for the appellant and the learned counsel for the 1st respondent.

7.This Court has carefully considered the submissions made on either side and the materials available on record.

8.This Court has also carefully gone through the award passed by the Tribunal.

9.In the instant case, the Tribunal has come to a categoric conclusion that the claimant is the tort-feasor and the accident has taken place only due to the negligence on his part. It is also quite apparent from Ex.P4 that the claimant was under the influence of alcohol at the time of accident.

10.In view of the above, once the claimant is found to be a tort-feasor, there is no question of fixing the liability under Section 163(A) of the Motor Vehicles Act, 1988. That apart, the claimant in this case is the borrower of the vehicle from the 2nd respondent herein, who is the owner of the vehicle. As the borrower of vehicle, the claimant will not be entitled to claim compensation under Section 163(A) of the Motor Vehicles Act and the law on this issue is too well settled. Useful reference can be made to the judgment of the Hon'ble Supreme Court reported in ***Ramkhiladi and another Vs. United India Insurance Company Limited and another*** reported in ***[2020 (2) SCC 550]*** and judgment of this Court in ***National Insurance Co. Ltd., Puducherry Vs. Rani and others*** reported in ***[2020 (2) CTC 703 (Mad)]***.

11.In the light of the above discussion, this Court holds that the Tribunal went wrong in directing the Insurance Company to pay the compensation amount to the claimant where the claimant is not entitled for any compensation. If at all, the claimant wants to make any claim under the policy that covers the vehicle, it will be subject to the terms and conditions of the policy being fulfilled by the claimant and it will be left open to the Insurance Company to deal with such claim in accordance with law.

12.In the result, the award in M.C.O.P.No.306 of 2018 dated 03.01.2022 is hereby set aside and this Civil Miscellaneous Appeal stands allowed. If the appellant – Insurance Company has deposited any amount, it will be left open to the appellant – Insurance Company to withdraw the same. Consequently, the connected Miscellaneous Petition is closed. No costs.

16.04.2024

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Index : Yes / No
Internet : Yes / No
Neutral Citation : Yes / No

To

1.The III Additional District Judge,
Motor Accident Claims Tribunal,
Villupuram @ Kallakurichi.

2.The Section Officer,
VR Section,
Madras High Court,

Chennai.

N.ANAND VENKATESH, J.

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