



C.M.A.No.56 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 25.07.2024

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

C.M.A.No.56 of 2023

and

C.M.P.Nos.529 & 5997 of 2023

The Divisional Manager,
The New India Assurance Company Limited,
No.1, Anna Salai (Officers Lane),
Vellore – 632 001.

.. Appellant

Vs.

1.M.Elumalai

2.P.N.Rajini

(R2 remained exparte before the Tribunal.
Hence, notice to R2 dispensed with)

3.Shriram General Insurance Company Limited,
Arni Road, Vellore – 632 001.

.. Respondents

(R3 is not a necessary party.
Hence, given up)

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the
Motor Vehicles Act, 1988, against the award and decree dated
26.02.2020 made in M.C.O.P.No.678 of 2016 on the file of the Motor



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Accident Claims Tribunal, I Additional District and Sessions Court,
Vellore, Vellore District.

For Appellant : Ms.G.Sukumari
for Mr.R.Sivakumar

For R1 : Mr.RRajarajan

J U D G M E N T

The Insurance Company has filed the present appeal against the award passed by the Motor Accident Claims Tribunal, I Additional District and Sessions Court, Vellore, Vellore District, in M.C.O.P.No.678 of 2016 dated 26.02.2020.

2.On 29.12.2012, the 1st respondent / claimant was driving a car in which his wife, daughter and grand children were occupants and the car was proceeding at Chennai – Bangalore National Highways. At about 11.45 A.M., the offending vehicle which was a lorry and which was going in front of the car was suddenly stopped as a result of which, the car dashed on the rear side of the lorry resulting in all the occupants of the car sustaining multiple injuries. Based on the complaint given by the driver of the lorry, FIR came to be registered in Crime No.1108 of 2012



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against the 1st respondent / claimant. It is under these circumstances, five claim petitions came to be filed before the Tribunal in M.C.O.P.Nos.678, 679, 680, 681 & 682 of 2016 seeking for payment of compensation.

3.The Tribunal on considering the facts and circumstances and on appreciation of the oral and documentary evidence, came to a conclusion that the 1st respondent / claimant underwent trial in S.T.C.No.195 of 2013 and he was acquitted by giving benefit of doubt. The judgment of the Criminal Court was taken into account by the Tribunal and it was found that there was negligence both on the part of the driver of the lorry as well as the 1st respondent / claimant. Therefore, the Tribunal fixed 50% contributory negligence against the 1st respondent / claimant.

4.The Tribunal thereafter proceeded to fix the total compensation at Rs.4,97,000/- under various heads as follows:

1.For Pain and Sufferings	-	Rs.25,000/-
2.For Partial Permanent Disability	-	Rs.72,000/-
3.For loss of earning during the period of treatment (Rs.6,000 X 6 months)	-	Rs.36,000/-
4.Medical Expenses	-	Rs.3,42,050/-



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5.Loss of Amenities	-	Rs.5,000/-
6.Extra Nourishment	-	Rs.5,000/-
7.For Transportation	-	Rs.5,000/-
8.Attender charges	-	Rs.5,000/-
9.For Damage to articles	-	Rs.2,000/-

Rs.4,97,050/-

4.Even though the claim petition was filed under Section 166 of the Motor Vehicles Act, 1988, the Tribunal considered the claim petition under Section 163-A of the Motor Vehicles Act, 1988. Accordingly, both the Insurance Companies which had insured the lorry and the car were directed to pay 50% compensation each to the claimant.

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

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



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

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

9.The main ground that was urged by the learned counsel for the appellant is that the claimant in this case was a tortfeasor and therefore, there is no question of paying any compensation to the claimant under Section 163-A of the Motor Vehicles Act, 1988. The learned counsel further submitted that in so far as all other claims are concerned, it was settled.

10.The learned counsel for the 1st respondent / claimant submitted that the Court below was dealing with the claim under Section 163-A of the Motor Vehicles Act, 1988 and therefore, the issue of negligence becomes irrelevant. It was therefore contended that the award passed by the Tribunal does not require the interference of this Court.



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11.The 1st respondent / claimant was the driver of the car. This car had dashed on the rear portion of the lorry. The lorry driver had given the complaint based on which the FIR was registered against the claimant. The final report was filed and the claimant also underwent trial. The Criminal Court rendered a finding to the effect that there was some amount of negligence on the part of the lorry driver also and therefore, the benefit of doubt was given in favour of the claimant. Accordingly, the Tribunal has fixed 50% negligence on the part of the lorry driver and the claimant.

12.The claim petition was filed under Section 166 of the Motor Vehicles Act, 1988 and subsequently, it was changed to Section 163-A of the Act. Probably this was in view of the fact that the negligence was attributed against the claimant. The fact that the Criminal Court had acquitted the claimant, does not completely take away the fact that the claimant had also contributed to the accident. To that extent, the claimant must be held to be a tort feisor in this case. Therefore, in so far as the tort feisor, the compensation cannot be claimed under Section 163-A of the Act. The law on this issue is too well settled and this Court wants to take



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note of the latest judgment of the Hon'ble Division Bench of this Court in

Iffco Tokio General Insurance Co. Ltd., Vs. K.Pazhanivel and others
reported in **2023 (1) TNMAC 73 (DB)**.

13.In the light of the above discussion, there is no question of paying compensation to the claimant by resorting to under Section 163-A of the Act, since the claimant is found to be a tort feisor in this case. Whether he was negligent only to an extent of 50% or he was negligent to the entire 100% is irrelevant, since the fact remains that the claimant had contributed to the accident. Therefore, he must be held to be a tort feisor. The Tribunal did not take into consideration this position of law and it proceeded to direct the two Insurance Companies to pay 50% each out of the total compensation fixed by the Tribunal. This finding of the Tribunal is liable to be interfered by this Court and accordingly the same is hereby set aside.

14.In the light of the above discussion, the award passed by the Motor Accident Claims Tribunal, I Additional District and Sessions Court, Vellore, Vellore District, in M.C.O.P.No.678 of 2016 dated 26.02.2020 is hereby set aside. Consequently, this Civil Miscellaneous



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Appeal stands allowed. If the appellant-New India Assurance Company Limited has deposited any amount, the same shall be permitted to be withdrawn with accrued interest. Consequently, the connected Miscellaneous Petitions are closed. No costs.

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

To

- 1.The I Additional District and Sessions Judge,
Motor Accident Claims Tribunal,
I Additional District and Sessions Court,
Vellore, Vellore District.
- 2.The Section Officer,
VR Section,
Madras High Court, Chennai.



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N.ANAND VENKATESH, J.

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