



Civil Miscellaneous Appeal Nos.1871 & 1872 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.07.2024

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THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Civil Miscellaneous Appeal Nos.1871 & 1872 of 2024

M.Sekar
S/o.Mari

... Appellant in C.M.A.No.1871/2024

Minor R.Nithish
S/o.Ramachandran

... Appellant in C.M.A.No.1872/2024

Vs.

1.E.Edwinraj
S/o.EdwardRaj
(Since R1 remained *ex parte* before the Tribunal
his presence may be dispensed with)

2.The National Insurance Company Ltd.,
Puducherry, No.165,
Nethaji Road,
Manjakuppam, Cuddalore. ... Respondents in both appeals.

Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 24.02.2023 made in M.A.C.T.O.P.Nos.3751 & 3753 of 2016 on the file of II Additional Subordinate Judge, Cuddalore.



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For Appellants : Ms.A.Subadra
[in both appeals]

For Respondents : Mr.J.Michael Visuvasam [R2]
[in both appeals]

COMMON JUDGMENT

These appeals have been filed against the award passed by the II Additional Subordinate Judge, Cuddalore, in M.A.C.T.O.P.Nos.3751 & 3753 of 2016, dated 24.02.2023, rejecting the claim petitions on the ground that the claimants did not satisfy the requirements under Section 163-A of the Motor Vehicles Act.

2. The case of the claimants is that the claimant in M.C.O.P.No.3751 of 2016 was riding a two wheeler on 05.06.2016 and the claimant in M.C.O.P.No.3753 of 2016 was the pillion rider. When they were travelling at Cuddalore - Panruti main road, the offending vehicle belonging to the first respondent was driven in a rash and negligent manner and it dashed on the two wheeler in which the claimants were travelling.



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3. The claimant in M.C.O.P.No.3751 of 2016 sustained hairline fracture in the right 2nd to 6th ribs at antero lateral aspect and other injuries. The claimant in M.C.O.P.No.3753 of 2016 also sustained minor injuries. Both of them underwent treatment. The Medical Board assessed permanent disability at 6% insofar as the claimant in M.C.O.P.No.3751 of 2016 is concerned. Insofar as the claimant in M.C.O.P.No.3753 of 2016 is concerned, there is no medical report or disability assessed. It is under these circumstances, the claim petitions came to be filed before the Tribunal under Section 163-A of the Motor Vehicles Act seeking for payment of compensation.

4. The Tribunal, on considering the facts and circumstances of the case and upon satisfying itself as to whether the facts of the case falls within the requirement of Section 163-A of the Motor Vehicles Act, came to a conclusion that the case in hand does not satisfy the requirements under Section 163-A of the Motor Vehicles Act and accordingly, both the claim petitions came to be dismissed. Aggrieved by the dismissal of the claim petitions, both these appeals have been filed before this Court.



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5. Heard learned counsel on either side and carefully perused the materials available on record.

6. The main ground urged by learned counsel for appellants is that the Tribunal had overlooked the provision under Section 4 of the Employee's Compensation Act, 1923 [hereinafter referred to as 'the Act'] and erred in coming to a conclusion that the claimants did not suffer any disablement as is explained under the Act.

7. It must be borne in mind that the claim petitions were filed under Section 163-A of the Motor Vehicles Act. To sustain such claim, the payment of compensation in the case of injury will arise only where the injury has resulted in a permanent disablement arising out of the use of a motor vehicle. In order to understand the term 'permanent disability', the provision itself, through an explanation, states that reference must be made to the Act.

8. The Tribunal has taken into consideration Section 2(g) and 2(l) of the Act. The Tribunal also took into consideration the report given by



the Medical Board. Ultimately, the Tribunal came to the conclusion that the injuries sustained by the claimants did not result in any permanent disablement and those injuries did not come under Schedule-I of the Act. Accordingly, the claim made by the claimants was rejected.

9. Learned counsel for appellant brought to the notice of this Court Section 4 of the Act and placed specific reliance upon Section 4(1)(c)(ii) of the Act. For proper appreciation, Section 4(1)(c)(ii) of the Act is extracted hereunder:

"Section 4(1)(c)(ii) - in the case of an injury not specified in Schedule I, such percentage of the compensation payable in the case of permanent total disablement as is proportionate to the loss of earning capacity (as assessed by the qualified medical practitioner) permanently caused by the injury."

10. It was contended that even where the injuries sustained by the claimants do not fall within Schedule I of the Act, it has to be seen if the case can be brought within the scope of Section 4(1)(c)(ii) of the Act. A careful reading of the above section shows that even with respect to such injuries, it must result in loss of earning capacity assessed by a qualified medical practitioner in view of the permanent disability caused due to the injuries.



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11. Learned counsel for appellants submitted that the Tribunal did not even make an attempt to examine the disability certificate given by the Medical Board or call upon the doctor to see if the injuries have resulted in a proportionate loss of earning capacity.

12. The above submission made by learned counsel for appellant would have appealed to this Court if any serious injuries have been sustained by the claimants. The injuries sustained by the claimants have already been taken note of and it is seen that they are not that serious to result in permanent disablement leading to loss of earning capacity. Ultimately, the injury must be to such an extent leading to functional disability and consequently, result in loss of earning capacity. Certainly, the injuries that were sustained by the claimants do not fall under this category. Therefore, there is no use in calling the doctor and getting an explanation.

13. In the considered view of this Court, the facts of the present case cannot be brought within the scope of Section 4(1)(c)(ii) of the Act. The finding of the Tribunal to the effect that the facts of the present case



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do not satisfy the requirement under Section 163-A of the Motor Vehicles Act does not warrant interference of this Court and the same is hereby sustained.

In the result, these Civil Miscellaneous Appeals are dismissed. No costs.

30.07.2024

Speaking Judgment/Non-speaking Judgment
Index : Yes/No
Neutral citation: Yes/No
gm

To
The II Additional Subordinate Judge,
Cuddalore.



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N.ANAND VENKATESH, J.

gm

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