



C.M.A(MD).No.418 of 2019

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 14.06.2024

DELIVERED ON: 02.07.2024

CORAM

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A.(MD).No.418 of 2019

The Branch Manager
New India Assurance Company Limited
Tenkasi Road
Rajapalayam Town

...Appellant/1st Respondent

Vs

1.Ganeshkumar

..1st Respondent/Petitioner

2.K.Ramar

..2nd Respondent/2nd Respondent

3.M.K.Mohammed Rabeek

..3rd Respondent/3rd Respondent

(R2 & R3 are not necessary parties for
adjudication: notice dispensed with)

PRAYER: The Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicle Act, 1988, to set aside the judgment and decree in MCOP.No.121 of 2014 dated 31.01.2019 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate Court, Virudhunagar District at Srivilliputhur.



C.M.A(MD).No.418 of 2019

WEB COPY

For Appellants : Mr.J.S.Murali
For R1 : Mr.M.Murugesan
R2 & R3 : Dispensed with

J U D G E M E N T

The instant appeal has been filed by the Insurance Company challenging the award passed by the Motor Accident Claims Tribunal at Srivilliputhur in MCOP.No.121 of 2014 primarily on the ground of liability.

2.The injured claimant who claims to be a driver cum lorry broker aged about 27 years while he was driving a Mini Van, a diesel tanker lorry came from the opposite direction in a rash and negligent manner and dashed against the Mini Van. In the said accident, the claimant had suffered serious injury and he was admitted to the hospital. In the claim petition, the claimant had contended that he is earning a monthly income of Rs.20,000/-. The application for compensation was filed under Section 163-A of the Motor Vehicles Act. The claimant had prayed for a compensation of Rs.10,00,000/-



C.M.A(MD).No.418 of 2019

WEB COPY

3.The insurer of the Mini Van which was driven by the claimant had filed a counter contending that the accident has taken place only due to the negligence on the part of the claimant himself. The police had also registered an F.I.R only as against the claimant. That apart, the owner of the offending vehicle is none other than the father of the claimant. Hence, they have prayed for dismissal of the claim petition.

4.The owner of the tanker lorry was impleaded as third respondent in the claim petition on 02.03.2017 and he filed a counter contending that only the claimant was responsible for the accident and there was no negligence on the part of the driver of the tanker lorry. He had further contended that the driver of the tanker lorry was having proper driving licence.

5.The Tribunal after considering the oral and documentary evidence had arrived at a finding that the accident had occurred only due to the rash and negligent driving on the part of the claimant himself and he proceeded to fix the partial permanent disability at 37% and fixed the quantum of compensation at Rs.7,38,200/-. The Tribunal proceeded to mulct the liability upon the insurance company on the ground that the



C.M.A(MD).No.418 of 2019

question of fault or negligence is immaterial and foreign to an enquiry under Section 163-A of the Motor Vehicles Act. Therefore, even assuming that the claimant was responsible for the accident, the insurance company cannot escape from the liability, merely pointing out that there was a negligence on the part of the claimant. Challenging the said award, the present appeal has been filed by the insurance company both on liability and quantum.

6.The learned counsel for the appellant had contended that the petition seeking compensation has been filed under Section 163-A of the Motor Vehicles Act. A perusal of column No.6 of the claim petition indicates that the claimant had contended that he is earning a sum of Rs.20,000/- per month. In view of the judgment of the Hon'ble Supreme Court reported in *(2004) 5 SCC 385(Deepal Girishbhai Soni and others Vs. United India Insurance Co.,Ltd., Baroda)*, the present claim petition under Section 163-A of the M.V.Act is not at all maintainable. If the notional income is more than Rs.40,000/-, the burden is upon the claimant to establish that there was a negligence on the part of the opposite party and therefore, the award of the Tribunal mulcting the liability upon the



C.M.A(MD).No.418 of 2019

insurance company after arriving at a finding that the claimant himself is negligent is not legally sustainable.

7.The learned counsel for the insurance company had further contended that merely because it is case of injury, the monthly income as claimed by the claim petition cannot be ignored and an award could be passed on a basis of percentage of disability.

8.The learned counsel for the appellant/insurance company had further contended that injured claimant is none other than the son of the owner of the Mini Van which he had driven. Admittedly, he is not a paid driver and therefore, there is no coverage for a person who has borrowed the vehicle from his father, under the insurance policy. Hence, he prayed for allowing the appeal and to exonerate the insurance company.

9.Per contra, the learned counsel appearing for the respondent claimant had contended that the monthly income would be material only in cases where the multiplier method is followed either in the case of functional disability or in the case of death. In the present case, for each



C.M.A(MD).No.418 of 2019

percentage of disability, a sum of Rs.3500/- has been awarded. Therefore, the contention that based upon the monthly income of the injured claimant, the claim petition is not maintainable, is not relevant for deciding the present appeal.

10.The learned counsel for the claimant had further contended that though the claimant had projected a sum of Rs.20,000/- per month as his monthly income, he had let in evidence that he is earning only a sum of Rs.3300/- per month which in turn would result in annual income of Rs. 40,000/-.

11.The learned counsel for the injured claimant had relied upon a judgment of the Hon'ble Division Bench of our High Court reported in **2019 (2) TN MAC 293(Chinnathamani and others Vs. Amman Granties and another)** to contend that the slab of notional income of Rs.40,000/- per annum was fixed in the year 1994 and therefore, applying the Cost Inflation Index, the annual income for the year 2014-2015 should be calculated at Rs.2,10,862/-. In such circumstances, the present application under Section 163-A of the Motor Vehicles Act is maintainable.



C.M.A(MD).No.418 of 2019

12.The learned counsel had further contended that the provision under Section 163-A of M.V.Act has been amended and Section 164 of M.V.Act has been introduced with effect from 01.01.2009 wherein the legal heirs of the deceased would receive a sum of Rs.5,00,000/- as lump-sum. The learned counsel for the claimant had further relied upon a judgment of our High Court in ***CMA.No.1141 of 2022 (Durgaram Vs. Arjunan and others)*** dated 21.11.2023 wherein our High Court has followed the amended provision for an accident that has taken place in December 2016 and proceeded to award Rs.2,50,000/- in a case of injury invoking the amended Section 164 of the M.V.Act. Hence, he prayed for sustaining the award passed by the Tribunal.

13.I have considered the submissions made on either side and perused the material records.

14.The claim petition has been filed under Section 163-A of the Motor Vehicles Act. In the claim petition, the monthly income of the injured claimant has been mentioned as Rs.20,000/-. The claimant had alleged that a diesel tanker lorry came from the opposite direction and



C.M.A(MD).No.418 of 2019

dashed against the mini lorry driven by him and he had sustained injuries.

The claimant had attributed negligence on the part of the driver of the diesel tanker lorry.

15.The Tribunal after considering the oral and documentary evidence had arrived at a finding that the accident has taken place only due to the negligence on the part of the injured claimant. Thereafter, the Tribunal has proceeded to hold that proving of negligence on the part of the offending vehicle is immaterial in a claim petition filed under Section 163-A of the Motor Vehicles Act. Based upon the said finding, a compensation of Rs.7,38,200/- has been awarded.

16.The learned counsel for the insurance company had contended that when the monthly income itself is more than Rs.20,000/-, the claimant cannot invoke the provisions of Section 163-A of Motor Vehicles Act. However, the learned counsel appearing for the first respondent had relied upon the Hon'ble Division Bench Judgment of our High Court reported in **2019 (2) TN MAC 293 (Chinnathamani and others Vs. Amman Granties and another)** wherein the Hon'ble Division



C.M.A(MD).No.418 of 2019

Bench had held that the cap of Rs.40,000/- as contemplated under Section 163-A of the Act has to be revised every year based upon a cost inflation index. As a result for the year 2014-2015, the cap for the annual income under Section 163-A of the Motor Vehicles Act should be fixed at Rs.2,10,862/-.

17.The Hon'ble Supreme Court in a judgment reported in **(2004) 5 SCC 385 (Deepal Girishbhai Soni and others Vs. United India Insurance Co.Ltd., Baroda)** in paragraph No.67 has categorically held that the proceedings under Section 163-A M.V.Act is a social security provision and the same can be invoked by those whose annual income is up to Rs.40,000/-. The said judgment of the Hon'ble Supreme Court was not placed before the Hon'ble Division Bench. Therefore, this Court is not inclined to follow the judgment of the Hon'ble Division Bench reported in **2019 (2) TN MAC 293 (Chinnathamani and others Vs. Amman Granties and another)**. In such circumstances, the contention of the learned counsel for the appellant that to treat the notional income at Rs.2,10,862/- is not legally sustainable.



C.M.A(MD).No.418 of 2019

18.The learned counsel for the appellant had further contended that the question of considering the notional monthly or annual income would arise only in cases where the victim had died. But it is a case of injury, the Tribunal has proceeded to fix Rs.3500/- per percentage of disability. Therefore, the annual income of the injured claimant need not be considered while considering an application filed by an injured claimant under Section 163-A of the Motor Vehicles Act.

19.A perusal of Section 163-A M.V.Act reveals that it is not only applicable to the cases of death, but also to the cases of permanent disablement due to the accident arising out of the use of motor vehicle. The second schedule which is traceable to Section 163-A M.V.Act, clearly reveals that it is a schedule for compensation for third party fatal accident/injury cases claim. Therefore, the said contention is also not legally sustainable.

20.The learned counsel for the appellant had further contended that though the claimant had claimed that his monthly income is more than Rs.20,000/-, he has let in evidence only to the effect his income is Rs.3300/- p.m which would not exceed Rs.40,000/- per annum. As pointed



C.M.A(MD).No.418 of 2019

out by the Hon'ble Supreme Court in (2004) 5 SCC 385 (*Deepal*

Girishbhai Soni and others Vs. United India Insurance Co.Ltd., Baroda)

the amount of Rs.40,000/- cannot be treated as a cap. When the income of the injured claimant exceeds Rs.40,000/- per annum, it makes him ineligible to file a claim petition under Section 163-A of M.V.Act. Therefore, by letting in evidence contrary to the pleadings, the claimant cannot escape from the rigor of Section 163-A of M.V.Act. Then in all cases, either the claimant would resort to downplay their income or the Court would itself give a finding that the income has not exceeded Rs.40,000/- so as to pass an award under Section 163-A of M.V.Act. Therefore, such a contention is not sustainable in law.

21.The learned counsel for the claimant had further contended that only the medical expenses have exceeded the limit of Rs.40,000/- cap, but the loss of income is only lesser than Rs.40,000/-. As pointed out earlier, if the annual income of the deceased/injured claimant had exceeded Rs.40,000/-, it makes the legal heirs or injured claimant as the case may be, ineligible to apply under Section 163-A of M.V.Act. It does not depend upon the evidence let in or quantum of award passed by the Tribunal.



C.M.A(MD).No.418 of 2019

22.The learned counsel for the clamant had further contended that Section 163-A M.V.Act has been amended under Act 32 of 2019 with effect from 01.04.2022 and the same principles have been incorporated under Section 164 of Amended Act. He had further pointed out that a sum of Rs.5,00,000/- lakhs can be awarded, in the case of death or Rs.2,50,000/- in the case of grievous hurt to the victim as the case may be, without challenging or establishing any negligence on the part of the other vehicle. In the present case, the accident has happened on 03.05.2014. The Act has come into force only on 09.08.2019 and therefore, the amended Act is not applicable to the accident that has taken place in the year 2014.

23.The learned counsel for the petitioner had relied upon a judgment of this Court in ***CMA(MD).No.1141 of 2022 (Durgaram Vs. Arjunan and others)*** dated 21.11.2023 wherein this Court has applied an amending Act for an accident that has taken place on 13.12.2016 following the judgment of the Delhi High Court reported in ***2022 SCC Online Delhi 3131 (Iffco Tokio General Insurance Co.Ltd., Vs. Uma Devi and others)***. But, in the present case, this Court has held that the claim petition under Section 163-A of the Motor Vehicle Act itself is not maintainable. In such



C.M.A(MD).No.418 of 2019

circumstances, this Court is not in a position to follow the decision of this Court.

24.In view of the above said deliberations, the award passed by the Tribunal is hereby set aside and this Civil Miscellaneous Appeal is allowed. No costs.

02.07.2024

Index : Yes/No
Internet : Yes/No
NCC : Yes/No
msa



C.M.A(MD).No.418 of 2019

WEB COPY

To

1. The Motor Accident Claims Tribunal,
/Chief Judicial Magistrate Court,
Virudhunagar District at Srivilliputhur.

2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



C.M.A(MD).No.418 of 2019

R.VIJAYAKUMAR, J

msa

Pre-delivery judgement made in
C.M.A.(MD).No.418 of 2019

02.07.2024