



C.M.A.(MD) No.786 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.09.2024

CORAM

THE HON'BLE MR.JUSTICE SUNDER MOHAN

C.M.A.(MD) No.786 of 2024

and

C.M.P.(MD)No.8640 of 2024

TATA AIG General Insurance Company Limited,
SPS Complex, IIIrd Floor, B28, 7th Cross East,
Samsung Mobile Centre, Upstair,
Thillai Nagar, Trichy – 620 018.

... Appellant

Vs.

1.Kannan,
2.Babu.

... Respondents

Prayer: Civil Miscellaneous Appeal filed under 173 of the Motor Vehicle Act, 1988, to set aside the Award dated 27.01.2023 passed in M.C.O.P.No.282 of 2016 on the file of the Motor Accidents Claims Tribunal, III Additional Subordinate Court, Tiruchirappalli.

For Appellant : Mr.J.S.Murali

For Respondents
for R1 : No appearance



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J U D G M E N T

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The appeal has been filed challenging the finding on liability.

2. The first respondent herein filed a claim petition stating that on 20.04.2016, while he was riding a motorcycle bearing Reg.No.TN-48-Y-2026 belonging to the second respondent, an unknown vehicle dashed against the motorcycle, as a result of which, he sustained injuries.

3. The owner of the vehicle/second respondent remained *ex parte* before the Tribunal.

4. The appellant/Insurance Company filed a counter stating that the claimant could not be entitled to the compensation, since, admittedly, no other vehicle was involved in the accident; and that in any case, since the claimant was earning more than Rs.18,000/- p.m., he would not be entitled to the compensation under Section 163A of the Motor Vehicles Act, 1988.

5. The claimant had examined himself as P.W.1 and marked Ex.P1. The Medical Register was marked as Ex.X1. The Disability Certificate



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was marked as Ex.C1. The appellant examined R.W.1 and R.W.2 and marked Exs.R1 and R3. The Final Report filed by the Police, after the investigation, was marked as Ex.X2.

6. The Tribunal, after taking into consideration the oral and documentary evidence, held that the appellant would be entitled to the compensation under Section 163A of the Motor Vehicles Act, 1988 and awarded the compensation of Rs.1,68,500/-.

7. The learned counsel for the appellant/Insurance Company submitted that the claim petition was filed under Sections 163A, 165, 166, 167 and 168 of the Motor Vehicles Act, 1988. The Tribunal had dismissed the claim petition filed under other provisions as there was no evidence to prove that any other vehicle was involved in the accident and that the claimant ought not to have claimed the compensation under Section 163A of the Motor Vehicles Act, 1988 and hence, prayed for setting aside the award.

8. Though notice sent to the first respondent/claimant was served and the name was printed in the cause list, none has entered appearance.



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WEB COPY 9. The second respondent remained *ex parte* before the Tribunal and hence, notice to the second respondent is dispensed with.

10. The only point for consideration in the instant appeals is '*whether the appellant could be liable to pay the compensation?*'

11. The claimant had examined himself as P.W.1 and marked Ex.P1-FIR to show that an unknown vehicle was involved in the occurrence. However, Ex.X2, which is a Final Report filed after the investigation by the Police, suggests that the claimant had fallen off the vehicle on his own and no other vehicle was involved. Therefore, the Tribunal had rightly dismissed the claim made under Section 166 of the Motor Vehicles Act, 1988. However, the Tribunal held that the claimant would be entitled to the compensation under Section 163A of the Motor Vehicle Act, 1988. This finding of the Tribunal is erroneous. It is well settled that the borrower of the vehicle would step into the shoes of the owner and hence, he would not be entitled to maintain the claim under Section 163A of the Motor Vehicles Act, 1988. In such view of the matter, this Court is of the view that the award of the Tribunal is liable to



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set aside and hence, set aside.

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12. The appellant/Insurance Company shall be entitled to claim a refund of the amount, if any, deposited by them, by filing an suitable application before the Tribunal.

13. In the result, the Civil Miscellaneous Appeal is allowed. No costs. Consequently, connected miscellaneous petition is closed.

09.09.2024

Index: Yes/ No
NCC: Yes / No
Speaking Order / Non-Speaking Order
apd

To:
1.Motor Accidents Claims Tribunal,
III Additional Subordinate Court, Tiruchirappalli.

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



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SUNDER MOHAN, J.

apd

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