



C.M.A.(MD).No.507 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 03.04.2024

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.507 of 2017

and

C.M.P(MD) No.5968 of 2017

M/s.New India Assurance Company Limited,
Represented by its Divisional Manager,
Rekah Towers, 248-B,
Kamarajar Salai,
Madurai – 625 009.

.....Appellant/Respondent No.2

-VS-

1. C.Karthick
2. S.Asokan

... 1st Respondent/Petitioner
... 2nd Respondents/1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicle Act, 1988, against the fair and decreetal order dated 02.06.2016 made in M.C.O.P.No.192 of 2013 on the file of the Special Sub Court for M.C.O.P cases, Madurai.

For Appellant : Mr.Y.Prakash

For Respondents : Mr.C.Vakeeswaran – for R1
: Mr.L.Prabhu – for R2



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J U D G M E N T

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The present Civil Miscellaneous Appeal has been filed by the appellant/Insurance Company challenging the award passed by the Motor Accidents Claims Tribunal/Sub Court, Madurai in M.C.O.P.No.192 of 2013.

2. According to the injured claimant, when he was riding a two wheeler on 09.03.2013, at about 10.45 p.m, a Tata Sumo Car owned by the first respondent and insured with the second respondent came in the opposite direction and dashed against the two wheeler. In the said impact, he sustained injuries. Hence, he had filed a claim petition under Section 163-A of the Motor Vehicles Act, 1988 and sought compensation of Rs.7,00,000/- (Rupees Seven Lakhs only).

3. The owner of the vehicle had remained *ex parte* before the Tribunal and the appellant/ Insurance Company had filed a counter contending that the accident has happened only due to the negligence on the part of the claimant and they have also disputed the quantum of compensation as prayed for in the claim petition. The Tribunal after going through the evidence on either side had arrived at a finding that since the claim petition had been filed under



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Section 163 – A of the Motor Vehicles Act, the claim petitioner need not plea and prove the negligence of the driver of the offending vehicle which is owned by the first respondent and insured with the second respondent. The Tribunal after considering the annual income of the claimant at Rs.40,000/- and has proceeded to award a sum of Rs.3,40,600/- (Rupees Three Lakhs Forty Thousand and Six Hundred only) towards compensation. Challenging the same, the present appeal has been filed by the Insurance Company.

4. The primary contention raised by the learned counsel appearing for the appellant is that the accident having been taken place due to the negligence on the part of the claimant, the Tribunal ought to have arrived at a finding that the claimant is the tort feisor and therefore not entitled to receive any compensation. He further contended that the injured claimant was charge sheeted in the criminal case for being the tort feisor. Hence, he contended that the award of the Tribunal may be set aside.

5. Per contra, the learned counsel appearing for the first respondent/ claimant had contended that since the claim petition has been filed under Section 163-A of Motor Vehicle Act, the question of pleading or proving the negligence on the part of the offending vehicle would not arise.



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6. I have carefully considered the submissions made by the learned counsel on either side and perused the materials available on record.

7. A perusal of the claim petition clearly indicates that the same has been filed under Section 163-A of the Motor Vehicle Act and the annual income of the injured claimant has been shown as Rs.40,000/-, in other words, the monthly income has been shown as Rs.3,300/- per month. Therefore, the question of pleading or proving the negligence on the part of the offending vehicle does not arise. Therefore, this Court does not find any merits in this Appeal.

8. Accordingly, this Civil Miscellaneous Appeal stands dismissed. There shall be no order as to costs. Consequently, connected Miscellaneous Petition stands closed.

03.04.2024

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
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1. The Special Sub Court for M.C.O.P cases,
Madurai.
2. The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR,J.

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