

C.M.A.(MD)No.605 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
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Dated : 04.03.2025

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

C.M.A.(MD)No.605 of 2018

and

C.M.P.(MD)No.7021 of 2018

United India Insurance Co. Ltd.,
Through its Branch Manager,
Indian Complex, Main Road,
Ottanchadram,
Dindigul District.

... Appellant

Vs.

1.K.Arumugam

2.P.Chinnaraj

... Respondents

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the fair and decretal order dated 26.03.2018, made in M.C.O.P.No.333 of 2008, on the file of the Motor Accident Claims Tribunal (Sub Court), Palani.

For Appellant : Mr.B.Rajesh Saravanan

For R1 : Mr.D.Venkatesh

For R2 : No Appearance



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JUDGMENT

This Civil Miscellaneous Appeal has been filed by the appellant/insurance company, challenging the award passed by the learned Motor Accident Claims Tribunal (Sub Judge), at Palani in M.C.O.P.No.333 of 2008 dated 26.03.2018.

2.For the sake of convenience, the parties are arrayed herein as per the ranking in M.C.O.P.No.333 of 2008

3.The factual matrix of the present case, briefly stated, are as under:-

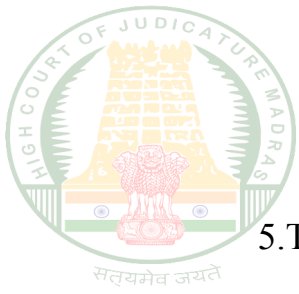
The petitioner is the injured/claimant. The first respondent was the owner of the two wheeler involved and the second respondent is the insurance company with which the vehicle belonged to the first respondent was insured. On 04.04.2008, the claimant was riding a motorcycle bearing registration No.TN-40-B-2705, along Palani – Dindigul road and while riding near V.V.R. Marriage Hall in the left side, due to flash light of the vehicle which came in the opposite direction, without noticing the pit which was dug for the purpose of building the bridge therein, the claimant had fell down along with two wheeler, as the result of which, he had sustained head injury and grievous



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injuries all over his body. Following which, he was admitted in Palani Government Hospital for treatment and further he was referred to Kovai Medical Centre, Coimbatore, as in patient for higher level treatment. In the course of treatment, he even suffered coma and he has not completely recovered and regained his full health. He was employed as Technical Assistant in the office of Assistant Divisional Engineer, Public Works Department and was earning Rs.11,000/- per month as salary. He suffered permanent disability and he has laid this claim petition, seeking compensation of Rs.2,00,000/- before the learned Tribunal.

4.The Tribunal had examined the 1st respondent/claimant as P.W.1 and marked 8 documents Ex.P1 to Ex.P8 through him. One witness was examined and one document was marked on the side of the appellant/insurance company. On the basis of arguments made by either parties, the evidence deposed and documents marked, the learned Tribunal proceeded to fix liability on the appellant/insurance company and was pleased to pass an award of Rs.1,93,338/- as compensation to the 1st respondent. Challenging the same, this Civil Miscellaneous Appeal is filed.



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5.The learned counsel appearing for the appellant/insurance company submitted that this is a case where the injured is the claimant, who in the course of riding a vehicle belonging to the first respondent happened to fell into a pit, due to his own inadvertence/negligence and having stepped into the shoes of the owner of the vehicle, he cannot lay the Accident Claim Petition being a tortfeasor, challenging the liability fixed on the second respondent with whom the vehicle involved is insured.

6.The learned counsel appearing for the first respondent submitted that the accident was not because of inadvertence/negligence of the claimant, but the same had happened because of flash light of the vehicle which came in the opposite direction, as the result of which, the injured/ claimant was not able to clearly find out the pits in the road and he had fell down and pressed for dismissal of the Appeal.

7.Heard the learned counsel for the appellant, the learned counsel for the first respondent and carefully perused the materials available on record.

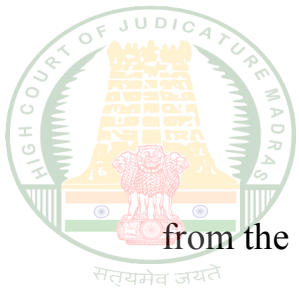
8.Though the learned Tribunal had proceeded to decide that the claimant/ injured is entitled for compensation by making a observation that the accident



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had happened because of flash light of the vehicle, which came in the opposite direction, I am of the considered view that the details of the vehicle involved, which came in the opposite direction is not elaborated by any sustainable oral or documentary evidence.

9.FIR is marked as Ex.P1 and careful perusal of the same would reveal that the defacto complainant in the said FIR was the eye witness of the said accident, namely, A.Alagiyaannan, had given information and on the basis of which, FIR No.89 of 2018 dated 05.04.2008, came to be registered by Ayakudi Police Station, at Dindigul. Ex.P1, FIR would reveal that the said informant was riding another vehicle behind the injured/claimant at about 11.30 p.m., on the fateful day. He had clearly informed before the jurisdictional police that the accident had happened only because the injured had fell down without noticing the two pits, which were dug for the purpose of building the new bridge. It was the informant, who had attended the injury and admitted him in Palani Government hospital. No where in the FIR, the factum of involvement of another vehicle is mentioned. When the FIR based on the eye witness is clear as to the nature of accident, the learned Tribunal ought not to have proceeded to relying upon the self serving evidence of the injured who justified the accident that the same had happened because of flash light of the vehicle, which came



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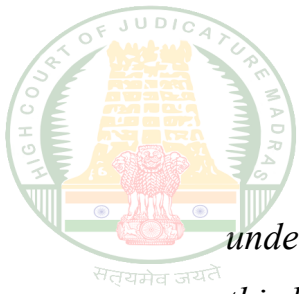
from the opposite direction.

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10.A similar case was dealt with by this Court in C.M.A.No.2907 of 2017, dated 30.06.2022, in which, this Court has categorically held that a tortfeasor, who had stepped into shoes of the owner is not entitled for compensation under the MACT Act and the relevant portion of the same is extracted as follows:-

“6.A perusal of the order passed by the Tribunal would show that the Tribunal has not taken into account the Judgment of the Hon-ble Supreme Court reported as Ramkhiladi and another v. The United India Insurance Company and another [2020 (2) SCC 550]. The facts will squarely apply to the facts of the instant case. The learned Judges had concisely set out the question that was posed for the Court-s consideration as follows:

“ 5.....is whether, in the facts and circumstances of the case and in a case where the driver, owner and the insurance company of another vehicle involved in an accident and whose driver was negligent are not joined as parties to the claim petition, meaning thereby that no claim petition is filed against them and the claim petition is filed only against the owner and the insurance company of another vehicle which was driven by the deceased himself and the deceased being in the shoes of the owner of the vehicle driven by himself, whether the insurance company of the vehicle driven by the deceased himself would be liable to pay the compensation

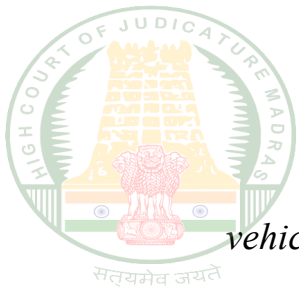


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under Section 163A of the Act?; Whether the deceased not being a third party to the vehicle No. RJ 02 SA 7811 being in the shoes of the owner can maintain the claim under Section 163A of the Act from the owner of the said vehicle? “

7.In Ramkhiladi and another v. The United India Insurance Company and another [2020 (2) SCC 550], the Tribunal had relied upon the principle that in a claim under Section 163A the claimant was not required to plead or establish negligence. The High Court had overturned this finding and held that the application under Section 163A of the Act against the Insurance Company of the vehicle driven by the deceased himself is liable to be dismissed. This was the subject matter of challenge before the Hon-ble Supreme Court. The learned Judge explained the principle and the purport of a claim under section 163A in Para 5.5 which is extracted hereinbelow:

“5.5 It is true that, in a claim under Section 163A of the Act, there is no need for the claimants to plead or establish the negligence and/or that the death in respect of which the claim petition is sought to be established was due to wrongful act, neglect or default of the owner of the vehicle concerned. It is also true that the claim petition under Section 163A of the Act is based on the principle of no fault liability. However, at the same time, the deceased has to be a third party and cannot maintain a claim under Section 163A of the Act against the owner/insurer of the vehicle which is borrowed by him as he will be in the shoes of the owner and he cannot maintain a claim under Section 163A of the Act against the owner and insurer of the



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vehicle bearing registration No. RJ 02 SA 7811. “

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11.In the light of the said judgment, I have no hesitation to hold that the rider of the two wheeler involved, who was injured and who is the claimant herein has received the two wheeler belonging to the first respondent and had met with an accident. Having stepped into the shoes of the owner/insurer of the two wheeler which has been insured with the second respondent who is the appellant herein, he will be in the shoes of owner and hence, he cannot maintain the claim under Section 163A of the Motor Vehicles Act, 1988, against the owner/insurer of the vehicle bearing registration No.TN-40-B-2705. Accordingly, the award passed by the learned Tribunal in M.C.O.P.No.333 of 2008 is set aside and the Civil Miscellaneous Appeal is allowed. The appellant/insurance company is permitted to withdraw the award amount, if any already deposited. The claimant/injured is directed to deposit the award amount, if any already withdrawn. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

04.03.2025

NCC : Yes / No
Index : Yes / No
Internet : Yes
Mrn



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To

- 1.The Motor Accidents Claims Tribunal,
(Sub Judge), Palani.
- 2.The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.



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L.VICTORIA GOWRI, J.

Mrn

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