



C.M.A. No. 3682 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.03.2024

CORAM:

THE HONOURABLE MR. JUSTICE K. RAJASEKAR

C.M.A. No. 3682 of 2021

B.P. Sathishkumar

... Appellant / Petitioner

Vs.

1. R. Malarkodi

2. The Divisional Manager,
National Insurance Company Limited,
Officers Line,
Vellore.

... Respondents / Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 to set aside the decree and judgement dated 05.08.2021 made in M.A.C.T.O.P. No. 495 of 2013 on the file of the Special Subordinate Judge, Motor Accident Claims Tribunal, Tirupattur.

For Appellant : M/s. M. Malar

For R1 : Notice Dispensed with

For R2 : M/s. R. Sree Vidhya



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JUDGMENT

This Civil Miscellaneous Appeal has been filed by the claimant seeking enhancement of compensation awarded in M.C.O.P. No. 495 of 2013, dated 05.08.2021 on the file of the Special Subordinate Judge, Motor Accident Claims Tribunal, Tirupattur, and also to set aside the finding, that absolved the insurance company from paying compensation.

2. For the sake of convenience, the parties are referred herein according to their litigative status before the Tribunal.

3. On 27.05.2008, at about 1:30 PM, the claimant was riding his Hero Honda bearing Registration No.TN-24-W-0041 from Krishnagiri to Vaniyambadi main road, while he reached near Natrampalli West bypass 'U' Turn, a Bajaj moped bearing Registration No.TN-29-K-7549 driven by its rider in a rash and negligent manner, dashed against the claimant's vehicle, thereby causing grievous injuries to the claimant. For the injuries sustained, the claimant has come forward with claim petition seeking compensation for a sum of Rs.10,00,000/- by invoking section 166 of the



Motor Vehicles Act, 1988 against the owner of the Bajaj moped, who is alleged to be a tortfeasor in this case and from his own insurer.

4. The first respondent is the owner of the Bajaj moped bearing Registration No.TN-29-K-7549 and the same was not insured and has not contested the claim, remained ex-parte. The Respondent No.2 – insurance company herein is the insurer of the claimant's vehicle has filed counter and contended the claim on the ground that since the claim petition is filed under Section 166 of the Motor Vehicles Act, which is based on the fault liability, the first respondent is alleged to be the tortfeasor, the claimant herein is insured of the Respondent No.2, the claim petition is not maintainable against the second respondent – insurance company.

5. The Tribunal after considering the evidence placed on record has held that the rider of the two wheeler belongs to the first respondent is the tortfeasor and further quantified and awarded compensation for a sum of Rs.2,45,056/- along with interest @ 7.5% per annum from the date of filing of petition till the date of realization and this compensation has to be paid only by the first respondent. The Tribunal further held that the second



respondent – insurance company is only the insurer of the claimant's vehicle, the second respondent is not liable to pay compensation.

6. Aggrieved over the dismissal of claim petition against the insurance company, this appeal has been filed by the claimant.

7. The learned counsel appearing for the claimant submitted that, it is true that the claim petition has been filed by invoking section 166 of the Motor Vehicles Act, based on fault liability against the first respondent, who is the owner of the offending vehicle, however, the compensation is also claimed against the second respondent – insurance company, who is the insurer of the claimant's vehicle by invoking Personal Accident Coverage. Necessary premium has also been paid for the claimant, hence the second respondent – insurance company is liable to pay compensation to the claimant and therefore, the claim petition is maintainable.

8. The learned counsel appearing for the insurance company submitted that, Section 166 of the Motor Vehicles Act is based on fault liability. The first respondent is alleged to be the tortfeasor. The claim



petition filed seeking compensation from the insurance company is not maintainable. The Tribunal based on the evidence placed on record has rightly held that the respondent - insurance company is not liable to pay compensation to the claimant, hence prays to confirm the award of the Tribunal.

9. I have considered the submissions made on both sides and perused the materials available on record.

10. In this case, the claimant has chosen to file claim petition against the insurance company by invoking personal accident coverage under section 166 of the Motor Vehicles Act. The Hon'ble Apex Court in ***Deepal Girishbhai Soni and Ors. Vs. United India Insurance Co. Ltd., Baroda [(2004) 5 SCC 385]***, has held that the claimant has to chose either section 166 or 163-A of the Motor Vehicles Act and he cannot chose both the provisions for seeking compensation in this case. On perusal of the pleadings and the evidence of the claimant shows that, the claimant has nowhere stated that the compensation is claimed by invoking Personal Accident Coverage and also he is only claiming compensation for the



tortious act noted against the first respondent herein. Admittedly, it is pleaded that the rider of the bajaj moped is the tortfeasor, being so, the claimant by invoking section 166 of the Motor Vehicles Act is entitled to get compensation only from the tortfeasor i.e., owner and insurer of the Bajaj moped vehicle. The owner of Bajaj Moped alone is arrayed as Respondent No.1 and the offending vehicle is not having insurance policy.

11. This Court in ***The Cholamandalam MS General Insurance Company Limited Vs. Ramesh Babu [2021 ACJ 979]*** has held that the claim petition filed under section 166 of the Motor Vehicles Act for claiming compensation by invoking personal accident coverage is not maintainable. The Hon'ble Apex Court in ***Ramkhiladi and Ors. Vs. The United India Insurance Company and Ors. [2020 ACJ 627]***, has considered the right of owner, claiming compensation from the insurance company under section 163-A and 147 of the Motor Vehicles Act, as observed in paragraph 9.5 as follows:

“9.5. It is true that, in a claim under Section 163-A 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 163-A of the Act is based



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*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 163-A 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 163-A of the Act against the owner and insurer of the vehicle bearing Registration No. RJ 02 SA 7811. In the present case, the parties are governed by the contract of insurance and under the contract of insurance the liability of the insurance company would qua third party only. In the present case, as observed herein above, the deceased cannot be said to be a third party with respect to the insured vehicle bearing Registration No. RJ 02 SA 7811. There cannot be any dispute that the liability of the insurance company would be as per the terms and conditions of the contract of insurance. As held by this Court in *Dhanraj vs. New India Assurance Co. Ltd.*, [(2004) 8 SCC 553], an insurance policy covers the liability incurred by the insured in respect of death of or bodily injury to any person (including an owner of the goods or his authorised representative) carried in the vehicle or damage to any property of a third party caused by or arising out of the use of the vehicle. In the said decision, it is further held by this Court that Section 147 does not require an insurance company to assume risk for death or bodily injury to the owner of the vehicle.”*

12. Since, section 166 of the Motor Vehicles Act is based on fault liability, only the tortfeasor is liable to pay compensation. In this case, the tortfeasor is the first respondent, who is the owner of the Bajaj moped, hence, the petition filed under section 166 of the Motor Vehicles Act by invoking Personal Accident Coverage is not maintainable.



13. The Hon'ble Apex Court in *Ramkhiladi case* cited supra, has directed the insurance company to pay compensation to the claimant therein by invoking personal accident cover, since the case involved therein is a fatal case and the insured therein was died in the accident. Even though, it is contended by the claimant that he had paid premium for Personal Accident Coverage, Ex.P.8 – Discharge Summary shows that, the claimant has sustained “*Lefort type II Fracture of maxilla*”, which does not fall within the schedule injury as agreed between the parties. The Personal Accident Cover under Section III for Registered Owner Cum Driver (CSI) is Rs.1,00,000/-. The Section III of IMT prescribes the scope of Capital Sum Assured (CSI) for Personal Accident Cover shows that only the below listed schedule injuries alone is liable to be compensated under the personal accident cover.

<i>S.No.</i>	<i>Description</i>	<i>Scale of Compensation</i>
1.	Death	100%
2.	Loss of two limbs or sight of two eyes or one limb and sight of one eye.	100%
3.	Loss of one limb or sight of one eye	50%
4.	Permanent total disablement from injuries other than named above.	100%

14. Based on the above observations, this Court is of the view,



since the claim petition is filed under section 166 of the Motor Vehicles Act, and the tortfeasor herein is the first respondent, the claimant herein is entitled to get compensation as quantified by the Tribunal, only from the first respondent and the second respondent – insurance company is not liable to pay any compensation to the claimant. This Court is of the view that the award of the Tribunal dismissing the claim against the Respondent No.2 – insurance company is proper and the same is hereby confirmed.

15. With regrd to quantum of compensation, the Tribunal based on the evidene of P.W.1, and connected records quantified compensation under various heads. The claimant has not come forward to examine himself by Medical Board and, Tribunal has not awarded compensation under the head disability. The Ex.P.8 – Discharge summary and Ex.P.12 – Disability Certificate shows that he sustained “*Lefort type II Fracture of maxilla*”. Hence, this Court is inclined to award Rs.15,000/- under the head disability. The compensation awarded by the Tribunal under other heads are concerned, this Court finds no infirmity and the same is hereby confirmed.

16. Accordingly, the compensation awarded by the Tribunal under



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various heads are hereby modified as follows:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or reduced
1.	Pain and Sufferings	40,000/-	40,000/-	Confirmed
2.	Extra Nourishment	5,000/-	5,000/-	Confirmed
3.	Attender Charges	3,000/-	3,000/-	Confirmed
4.	Medical Expenses	1,74,056/-	1,74,056/-	Confirmed
5.	Loss of Amenities	10,000/-	10,000/-	Confirmed
6.	Loss of Income during injury	13,000/-	13,000/-	Confirmed
7.	Disability	---	15,000/-	Granted
	Total Compensation	2,45,056/-	2,60,056/-	Enhanced

18. In the result, this Civil Miscellaneous Appeal is dismissed and the compensation by the Tribunal of Rs.2,45,056/- is hereby enhanced to **Rs.2,60,056/- [Rupees Two Lakh Sixty Thousand and Fifty Six only]** along with interest at the rate of 7.5% per annum from the date of filing of Claim Petition till the date of deposit, excluding the default period, if any. In other aspects, the award of the Tribunal shall stand confirmed. There shall be no order as to costs in the present appeal.

22.03.2024

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Index:Yes/No



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Speaking Order: Yes/No
Neutral Citation Case: Yes/No

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To:

1. The District Judge,
Motor Accident Claims Tribunal,
Tiruvannamalai.
2. The Section Officer,
V.R. Section,
High Court, Chennai.



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K. RAJASEKAR, J.

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