



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.04.2024

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THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

CMA No.3071 of 2023
and CMP No.29019 of 2023

The United India Insurance Company Limited
Divisional Office No.1
104A, Ranga Building
Peramanur Main Road,
Salem – 7.

..Appellant

.vs.

P.Mohan

..Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the judgment and Decree dated 06.07.2019 made in MCOP No.603 of 2017 on the file of Motor Accident Claims Tribunal, The Special Subordinate Judge II, Salem.

For Appellants : Mr.C.Paranthaman

For Respondent : Mr.S.P.Yuvaraj

JUDGMENT

This appeal has been filed by the Insurance Company questioning the very

liability to pay compensation to the respondent that has been fixed by Motor



Accident Claims Tribunal, Salem in MCOP No.603 of 2017 by Award dated

06.07.2019.

2.Heard Mr.C.Paranthaman, learned counsel appearing on behalf of the appellants and Mr.S.P.Yuvaraj, learned counsel appearing on behalf of the respondent.

3.In the instant case, admittedly the respondent/claimant had sustained injuries after being hit by an unknown vehicle. As per the policy, the respondent had a cover under personal accident for owner-driver. If compensation has to be paid under this policy, 100% cover is payable only in the case of death, loss of two limbs or sight of two eyes. Permanent total disablement of 50% of the PA cover is payable for loss of one limb or sight of one eye. Other than this, the claimant will not be entitled for any compensation as per the policy condition. In the instant case, the claimant/respondent has suffered a fracture of the fifth metacarpal bone and the disability was assessed at 16.5%.

4.The Tribunal while deciding this issue has rendered the following finding:

மேற்படிமனுதாரரின் வாதம் மற்றும் முன்மாதிரி வழக்கு
சங்கதிகளை ஆராய்ந்ததில் மனுதாரருக்கு ஏற்பட்ட காயத்தால்



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மனுதாரருக்கு 16.5 சதவிகித நிரந்தர ஊனம் ஏற்பட்டுள்ளதால் பாலிசி விதியில் குறிப்பிட்டுள்ள நான்காவது காயத்தின் அடிப்படையில் சுயவிபத்து காப்பீட்டின் அடிப்படையில் மனுதாரருக்கு 100 சதவிகித இழப்பீட்டைப் பெற தகுதி உள்ளது என இவ்வாறாக, முதலாவது ஆய்வுக்கான பிரச்சினைக்கு முடிவு காணப்படுகிறது.

5.In the considered view of this Court, the above finding rendered by the Tribunal is totally unsustainable. Insofar as the owners liability is concerned, it is contractual in nature and its is limited to the extent of coverage stipulated under the terms and conditions of the contract. The Tribunal has assumed that the disability of 16.5% that was assessed will also come within the scope of the terms of the policy. Such a finding rendered by the Tribunal is more on assumption rather than properly understanding the scope of the terms of the policy condition.

6.This issue is squarely covered by the order passed by this Court in CMA No.3 of 2021, dated 17.03.2023. The relevant portions are extracted hereunder:

13.From a reading of the Policy it is seen, that in the Policy the Personal Accident Coverage is as follows:

“Section IV – PERSONAL ACCIDENT COVER FOR OWNER-DRIVER

The company undertakes to pay compensation as per the following scale for bodily injury/death sustained by the



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owner/driver of the vehicle in direct connection with the vehicle insured or whilst mounting into/dismounting from or traveling in the insured vehicle as a co-driver caused by violent accidental external and visible means which independent of any other cause shall within six calendar months of such injury result in:

Nature of Injury	Scale of Compensation
(i) Death	1
(ii) Loss of two limbs or sight of two eyes or one limb and sight of one eye	1
(iii) Loss of one limb or sight of one eye	1
(iv) Permanent total disablement from injuries other than named above	1

Provided always:

1) the compensation shall be payable under only one of the items (i) to (iv) above in respect of the owner-driver arising out of any one occurrence and the total liability of the insurer shall not in the aggregate exceed the sum of Rs.2 lakh during any one period of insurance.

2) no compensation shall be payable in respect of death or bodily injury directly or indirectly wholly or in part arising or resulting from or traceable to (a) intentional self injury, suicide or attempted suicide, physical defect or infirmity or (b) an accident happening



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whilst such person is under the influence of 'intoxicating liquor or drugs.

3) Such compensation shall be payable directly to the insured or to his/her legal representatives whose receipt shall be the full discharge in respect of the injury to the insured.

4) This cover is subject to

(a) the owner-driver is the registered owner of the vehicle insured herein;

(b) the owner-driver is the insured named in this policy;

(c) the owner-driver holds an effective driving license, in accordance with the provisions of Rule 3 of the Central Motor Vehicles Rules, 1989, at the time of the accident."

14. From a reading of the above, it is clear that the injuries and the disability sustained by the claimant are not covered by the Policy. It is also well settled in law that in case of third party the liability of the Insurance Company is unlimited, but, for owner's liability, it being contractual in nature, is limited to the extent of coverage stipulated under the terms and conditions of the contract.

15. The Judgments relied on by the learned counsel for the appellant in Cholamandalam Ms. General Insurance Company Vs. Ramesh Babu and M/s. Iffco Tokio General Insurance Company Limited



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Vs Sivakumar, in my view squarely apply to the facts of the case. In Cholamandalam Ms. General Insurance Company Vs. Ramesh Babu it was held as follows: “

34.It is important to note that the terms and conditions stipulated in the Insurance policy are of paramount importance for the purpose of deciding the liability as well as to fix the quantum of compensation to be paid. In the event of no coverage under the policy, then the Insurance M/S.The Cholamandalam Ms General vs Ramesh Babu on 2 September, 2020 C.M.A.No.2434 of 2019 company cannot be held liable to pay compensation. The policy being contractual in nature, the person claiming benefit under the policy must establish that he is entitled for compensation with reference to the terms and conditions agreed between the parties in the signed contract. Undoubtedly, no person is entitled to claim any benefit beyond the scope of the terms and conditions agreed between the parties. Thus, nature of policy, terms and conditions stipulated, which all are agreed upon are the factors to be ascertained preliminarily by the Courts for the purpose of entertaining the Claim Petitions as well as to fix the liability to pay compensation.”

16.In CMA.No.2784 of 2017 vide Order dated 25.03.2021 in the case of M/s.Iffco Tokio General Insurance Company Limited Vs Sivakumar it was held as follows: “



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9.The claimant as insured is entitled to get compensation only if the injury falls under any of the injury mentioned in the contract. Since the injury sustained by the claimant does not fall within the scope of P.A. cover, the award of the Tribunal, treating the claimant as third party, is erroneous and liable to be set aside. Accordingly, the appeal is allowed and the award of the Tribunal is set aside. The appellant Insurance Company is not liable to pay any compensation to the insured/owner of the vehicle, since the injury sustained by him does not fall within the category of the injury mentioned under P.A. cover of the contract. As a result, if any amount deposited by the Insurance Company, the Insurance Company is permitted to withdraw the same.”

17.In the light of the above discussions, I am of the considered view that the Judgment and Decree of the Claims Tribunal is unsustainable and hence it is set aside. The appeal is allowed without costs. The Insurance Company is permitted to withdraw the amount, if any, deposited by it. Consequently, the connected Miscellaneous Petition stands closed

7.The above order squarely applies to the facts of the present case. This Court holds that the appellant Insurance Company is not liable to pay the compensation under the policy, since the injury and disability does not fall under the terms of the policy. Hence, the compensation fixed by the Tribunal is unsustainable.



N. ANAND VENKATESH., J

SSR

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8. In the result, the Award passed by the Motor Accident Claims Tribunal, viz., The Special Subordinate Judge II, Salem in MCOP No.603 of 2017, dated 06.07.2019, is hereby set aside and this Civil Miscellaneous Appeal stands allowed. The amount that has been deposited by the Insurance Company shall be permitted to be withdrawn by the Insurance Company by virtue of this order. No Costs. Consequently, connected miscellaneous petition is closed.

05.04.2024

Index : Yes
Speaking Order
Neutral citation : Yes
ssr

To

The Motor Accident Claims Tribunal,
The Special Subordinate Judge II, Salem.

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