IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.09.2016

CORAM:

THE HONOURABLE MR.JUSTICE T.RAJA

CMA.No.2082 of 2011

Bajaj Allianz General Insurance Co. Limited
Pondicherry-11 Appellant/Respondent

Vs

Madhavan Respondent/Petitioner

Prayer:- This Civil Miscellaneous Appeal is filed against the judgement and decree, dated 21.08.2009, made in MCOP.No.17 of 2008, by the learned Additional District Judge (MACT), Karaikkal.

For Appellant : Mr.N.Vijayaraghavan

For Respondent : Mr.G.K.Ilanthirayan for
M/s.Sai Bharath and Ilan

ORDER

The Bajaj Allianz General Insurance Company Limited, aggrieved by the judgement and decree, dated 21.08.2009, made in MCOP.No.17 of 2008, by the learned Additional District Judge (MACT), Karaikkal, awarding a sum of Rs.75,000/- with interest at 7.5% p.a as total compensation to the Respondent/claimant, making the Appellant Insurance Company liable to pay the said compensation, has filed this appeal.

2. The learned counsel for the Appellant Insurance Company has assailed the impugned award on the ground that the Tribunal has erred in passing the award on the ground that the policy covers personal accident to the owner- driver without even looking into the relevant clause and the nature of the injuries sustained by the claimant and that when there was a personal accident cover, which was a contractual cover against the death and specified injuries only, the Tribunal has failed to appreciate that the injured claimant having no cover under the specified four heads, namely, death, loss of two limbs, loss of one limb and partial and permanent disablement due to injuries, has wrongly assumed that by reason of the personal

accident cover, the Appellant Insurance Company was liable even for the personal claim. He would further submit that the impugned award has been passed ignoring the fact that the claim under Section 166 of the Motor Vehicles Act was not even maintainable by the owner of the vehicle that too when the claimant himself caused the accident and that Section 166 of the Act makes its clear that the claim is maintainable against the owner for negligence of the driver and not by the owner himself against his own Insurance Company and therefore, on the ground of no liability against the Insurance Company, the impugned award is unreasonable and untenable and hence, liable to be set aside.

3. At the out set, this court is unable to find any justification whatsoever in entertaining this appeal, in view of the terms and conditions of the policy stipulated in Section III. It is not in dispute that on 17.10.2007 at about 6.30 p.m. when the claimant was returning to his house, after completing his work from Vizhidiyur, by riding his motorcycle, bearing Reg.No.PY-02-E-2556 from west to east direction, near Kaliamman Koil, Uzhiyapathupet, Neravy Commune along with his relative S.Arun as a pillion rider, a dog suddenly crossed the road and got collided with the front wheel of the motor cycle, as a result of which, the claimant fell down on the road and sustained grievous injuries on his right leg and all over his body. Immediately, he was taken to Priya Hospital, Karaikkal, where he was given first aid treatment and thereafter, he took treatment in the MIOT Hospital, Chennai as an inpatient for 12 days from 18.10.2007 to 29.10.2007. On discharge, he was advised to come for review in the said hospital once in two weeks. Therefore, he has made a claim of Rs.3 lakhs for the various grievous injuries sustained by him on his right leg tibia bone and all over his body. The Tribunal, considering the fact that the claimant took treatment as an inpatient for 12 days from 18.10.2007 to 29.10.2007, has rightly come to the conclusion that the claimant is entitled to get the compensation.

4. Even Ex.P5 insurance policy has clearly shown that the Company undertakes to pay the compensation as per the following scales for bodily injury/death sustained by the owner-driver of the vehicle in direct connection with the vehicle insured:-

S.No.	Nature of Injury	Scale of Compensation
1	Death	100.00%
2	Loss of two limbs or sight of two eyes or one limb and sight of one eye	100.00%
3	Loss of one limb or sight of one eye	
4	Permanent total disablement from injuries other than named above	100.00%

In view of the said terms and conditions of the policy, the Tribunal has rightly awarded a sum of Rs.50,000/- towards the disability and Rs.25,000/- towards pain and suffering and extra nutrition. Therefore, the contention made by the learned counsel for the Appellant that the injured claimant has not suffered any one of the four situations as contemplated under the said Section III of the Insurance Policy is totally unjustifiable.

5. A reading of the above said terms and conditions of the policy clearly shows that the Insurance Company has undertaken to pay the compensation as per the scale for bodily injury/death sustained by the owner-driver of the vehicle in direct connection with the vehicle insured Company while mounting into or dismounting from or travelling in the insured vehicle as a co-driver. In the present case, when the Insurance Company has undertaken to pay the compensation for the bodily injury, they cannot contend that only in event of death or permanent total disablement or loss of one limb or loss of sight of one eye, they could be saddled with the liability.

6. Further, in view of the aforementioned terms and conditions, the contention of the learned counsel for the Appellant that only in a case where a person who has lost his life or suffered permanent total disablement, the injured is entitled to get the compensation, is completely unreasonable. In a case where an injured, who suffered even grievous injuries, which are equivalent to permanent total disablement, due to continuous treatment by spending huge amount, is able to recover, the Insurance Company cannot take a stand that the injured having failed to suffer permanent total disablement is not entitled to get any compensation. Therefore, the finding given by the Tribunal is absolutely justified and therefore, the impugned award is liable to be confirmed.

7. In the result, this civil miscellaneous appeal is dismissed. No costs. Since it is stated by the learned counsel for the Appellant Insurance Company that the entire award amount with accrued interest had already been deposited, it is for the claimant to withdraw the same by making appropriate application before the Tribunal.

-s/d-
Assistant Regsitrar

True Copy
Sub-Assistant Registrar

To:

1.The Additional District Judge (MACT), Karaikkal

2.The Record Keeper, VR Section, High Court, Madras

+1 cc to Mr.M.B.Gopalan Advocate sr 55610
+1 cc to M/s.Sai Bharath & Ilan Advocate sr 55012

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