BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 13.12.2017

CORAM :
THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
C.M.A.(MD)No.1181 and 1152 of 2016

Ragavendran ... Appellant in C.M.A. 1181/2016 and Second Respondent in CMA(MD) 1152/2016.

Subash @ Surya Prakash ... Appellant in C.M.A. 1152/2016

Vs.

1.Nattuthurai ... First Respondent in both appeals

2.Ragavendran ... Second Respondent in C.M.A.1152/16

3.Oriental Insurance Co., Ltd.,
First Floor,
Layolo Building,
Salai Road, Dindigul,
rep. by its Divisional Manager ... Second Respondent in C.M.A.1181/16 and third Respondent in C.M.A 1152 of 2016

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to set aside the fair and decreetal order dated 04.03.2015 made in M.C.O.P.No.89 and 41 of 2012 on the file of the Motor Accident Claims Tribunal, (Chief Judicial Magistrate), Dindigul.

For Appellant : Mr.S.Srinivasa Raghavan in both Appeals.

For Respondents : Mr.C.Jawahar Ravindran for R2 in C.M.A.1181/2016 & R3 in C.M.A.1152 of 2016

No appearance for R1 in CMA 1181/2016 & for RR1 & 2 in C.M.A.1152 of 2016

COMMON JUDGMENT

One Ragavendran, owner of Maruti Car was travelling in his vehicle on 01.01.2010 at about 5.30 a.m. on Thandikudi –

Pannaikadu Road. The driver of the vehicle dashed against the road side stone. In the resulting accident, the car owner Ragavendran suffered fractures. Another co-passenger by name Subash @ Surya Prakash suffered severe fractures on the head. Ragavendran filed M.C.O.P.No.89 of 2012 on the file of the Motor Accident Claims Tribunal, (Chief Judicial Magistrate), Dindigul and the co-passenger Subash @ Surya Prakash filed M.C.O.P.No.41 of 2012 on the file of the same Tribunal.

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2.The Tribunal held that the car owner cannot maintain a claim against his own insurer. The claim petition was therefore held to be not maintainable. However, the Tribunal referred to the fact that in this case, the insurance policy had personal accident cover also. In the award, Tribunal noted GR 36 Personal Accident (PA) cover under Motor policy, which reads as follows:

> "Compulsory Personal Accident cover for Owner – Driver
>
> Compulsory Personal Accident Cover shall be applicable under both Liability Only and Package policies. The owner of insured vehicle holding an effective driving licence is termed as owner-Driver for the purpose of this Section. Cover is provided to the Owner-Driver whilst driving the vehicle including mounting into/dismounting from or travelling in the insured vehicle as a co-driver."

In the instance accident, the learned counsel for the appellant pointed out that the claimant had travelled in the vehicle only as a co-driver. Therefore, the benefit of personal accident coverage could be extended to him also. I find force in the said submission. Nature of injuries suffered by the claimant are not however referred to in Section 3 of the policy of insurance. This Court however has held that the injuries mentioned in the policy of insurance are not exhaustive. Considering the injuries suffered by the claimant, I am of the view that a sum of Rs.50,000/- can be directed to be paid by the insurer. Accordingly, the award dated 04.03.2015 dismissing M.C.O.P.No.89 of 2012 on the file of the Motor Accident Claims Tribunal, (Chief Judicial Magistrate), Dindigul is set aside.

3.The second respondent insurance company is directed to deposit a sum of Rs.50,000/- with interest at the rate of 7.5% per annum, from the date of petition till the date of realization and costs, within a period of eight weeks from the date of receipt of a copy of this order. On such deposit, the claimant is permitted to withdraw the same by filing proper application before the Tribunal.

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4.It is seen that the injured claimant suffered disability to the extent of 35%. He suffered fracture in the head. He was an inpatient for 25 days in Meenakshi Mission hospital. The Tribunal had awarded a sum of Rs.2,20,000/- alone as compensation. It is clearly inadequate. Therefore, the compensation payable to the claimant can be reworked as under:

Medical Expenses	:	Rs.1,90,000
Disability compensation (35% x Rs.3,000)	:	Rs.1,05,000
Pain and sufferings	:	Rs. 20,000
Extra nourishment	:	Rs. 5,000
Transportation	:	Rs. 5,000
Total		Rs.3,25,000

Accordingly, the award is enhanced from Rs.2,20,000/- to Rs.3,25,000/-. The award dated 04.03.2015 made in M.C.O.P.No.41 of 2012 on the file of the Motor Accident Claims Tribunal, (Chief Judicial Magistrate), Dindigul is modified.

5.The second respondent insurance company is directed to deposit a sum of Rs.3,25,000/- with interest at the rate of 7.5% per annum, from the date of petition till the date of realization and costs, within a period of eight weeks from the date of receipt of a copy of this order, less the amount already deposited if any. On such deposit, the claimant is permitted to withdraw the same by filing proper application before the Tribunal, less the amount already withdrawn by him, if any.

6.C.M.A.(MD) No.1181 of 2016 is partly allowed and C.M.A.(MD) No.1152 of 2016 is allowed. No costs.

Sd/
Assistant Registrar (RTI)

/True copy/

Sub Assistant Registrar

To

The Chief Judicial Magistrate,
Motor Accident Claims Tribunal,
Dindigul.

Copy to:

The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.**(2 Copies)**

+2cc to Mr.S.SRINIVASA RAGHAVAN, Advocate, SR.No. 92853,92854
+1cc to Mr.C.JAWAHAR RAVINDRAN, Advocate, SR.No. 93069

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