IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:07.08.2019

CORAM:

THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

C.M.A.No.1441 of 2015
and
M.P.No.1 of 2015

United India Insurance Company Limited,
No.1, A, Kungumam Complex,
Thanjavur Main Road,
Thiruverambur - 620 013. .. Appellant/Respondent

Vs.

M. Senthilkumar .. Respondent/Petitioner

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award and decree dated 21.04.2015 in MCOP.No.544 of 2014 on the file of the Motor Accident Claims Tribunal, (Chief Judicial Magistrate) Perambalur.

For Appellant : M/s.D. Bhaskaran

For Respondent : No appearance

J U D G M E N T

This Civil Miscellaneous Appeal has been preferred against the judgment and decree dated 21.04.2015 in MCOP.No.544 of 2014 on the file of the Motor Accident Claims Tribunal, (Chief Judicial Magistrate) Perambalur.

2. The brief facts of the case is as follows:

On 27.08.2014 at 01.15 p.m., when the petitioner was driving his Two-Wheeler bearing Reg.No.TN-81-Z-4077, a person named Sagayaraj suddenly crossed the road, subsequent to which the petitioner applied brake, but he dashed the said Sagayaraj. As a result, the petitioner who ride the TVS XL Super two-wheeler fell down and got multiple grievous injuries all over his body. Immediately, he was admitted in Apollo Hospital, from 27.08.2014 to 15.09.214 as inpatient and a case was also registered in Cr.No.208 of 2014 under Sections 279 & 337 of IPC in Thuvakudi Police Station. The claimant claimed that his vehicle was insured with the respondent and hence they are liable to pay Rs.10,00,000/- as compensation to him.

3. The appellant/Insurance company in the counter statement has clearly contended that the FIR was launched by one Sagayaraj stating that the petitioner viz., Senthilkumar driven a moped in a rash and negligent manner and FIR is filed against the petitioner. It is also contended by the respondent that the accident occurred only due to the own negligent on the part of the petitioner, he being the owner of the vehicle cannot claim compensation from the respondent. The FIR also clearly proved the fact that the vehicle's owner is the respondent/claimant. Hence, the respondent / Insurance Company prays that the claim application itself has sought to be dismissed.

4. The Tribunal after analyzing the evidence and documents has awarded a sum of Rs.4,20,733/- as compensation to the claimant and directed the respondent/Insurance Company to pay the said amount, since the vehicle was insured with them on the date of the accident. Aggrieved against the compensation and liability, the appellant/Insurance Company, who is the respondent therein has preferred this appeal.

5. In the grounds of appeal, the appellant/Insurance Company has contended that the Tribunal has erred in awarding Rs.4,20,733/- with interest as compensation inspite of the fact that the claim petition itself is not maintainable. It further contends that the Tribunal failed to note that under Section 147 of the Act does not require an Insurance Company to assume risk for death or bodily injury to the owner of the vehicle. The Tribunal failed to note that the larger bench of the Hon'ble Supreme Court made clear that the liability of Insurance Company is only for the purpose of indemnify the insured against the liability incurred towards third party or in respect of damages to property. It further claims that the liability of insurer is only for the purpose of indemnifying insured against liability incurred towards third party not require insurer to assume risk to owner of the vehicle. The Tribunal also failed to note that the claim petition filed by owner/claimant against himself is not maintainable and it has not noted that tort-feasor cannot claim compensation for his own conduct against insurer.

6. No representation for the respondent and heard the learned counsel for the appellant and perused the records.

7. On perusal of records, it is seen that the accident occurred only due to the negligence on the part of the

petitioner himself. Though the Tribunal has observed that the said FIR has been lodged against the petitioner, and the deposition of RW1 that the erring vehicle was not insured with the respondent at the time of the accident, in view of the fact that no contra evidence has been adduced to show that the respondent is not the insurer, the Tribunal fixed the liability on the 2nd respondent being the insurer of the vehicle.

8. It is argued by the appellant that the claimant himself is the owner of the vehicle and he was also driving the vehicle at the time of accident and he has insured the said vehicle with this appellant, liability is fixed on the Insurance Company.

9. The Tribunal by relying upon the following judgment has fixed the liability on this appellant/Insurance Company. The relevant portion is extracted below.

i) In CDJ 2008 SC 754 , Oriental Insurance Co., Ltd., Vs. Rajni Devi & Others, it is held that

> "where a third party is involved, the liability of the Insurance Company is automatically attracted, when compensation is claimed for the death of the owner or another passenger of the vehicle, the contract of insurance company being governed by the principle contract quo contract, the claim of the Insurance Company would depend upon the terms thereof."

In the said case, claim was made for the death of the owner. An elaborate discussion was made how the Insurance company is liable to pay compensation to a person or a third party. In a case where the third party is involved, the liability of the Insurance Company would be unlimited. Where, compensation is claimed for the death of the owner or another passenger of the vehicle, the contract of insurance being governed by the contract qua contract, the claim of the insurance company would depend upon the terms thereof.

10. The other citations relied upon by the learned counsel for the appellant are as follows:

ii) In CDJ 2004 SC 1065, Dhanraj Vs. New India Assurance Co.Ltd., & Another, it is held that

> "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 authorized 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. Section 147 does not require an Insurance

Company to assume risk for death or bodily injury to the owner of the vehicle."

iii) 2007(2) TN MAC 56 (SC), Oriental Insurance Co., Ltd., Vs. Jhuma Saha & Others.

iv)2018(2) TN MAC 286 (SC), National Insurance Co., Ltd., Vs. Ashalata Bhowmik and others

v) 2017 (2) TN MAC 674 (DB), Divisional Manager, United India Insurance Co, Ltd., Vs. R. Rekha and Others.

vi) In CMA.No.2859/2018 dated 20.12.2018, United India Insurance Company Ltd., Vs. Kannaiyan, this Court has held in paragraph No.10 as follows:

> The contention of the learned counsel appearing for the respondent is that, in view of the package policy taken by the respondent/claimant including Personal Accident Coverage, the appellant-Insurance Company is liable to pay Rs.3,70,000/- as awarded by the Tribunal. On the other hand, it is the contention of the learned counsel appearing for the appellant-Insurance Company that the claim petition itself is not maintainable and Personal Accident Coverage is only to the limit of Rs.1,00,000/- and the respondent/claimant is entitled to compensation only to the maximum limit of Rs.1,00,000/-

vii) CMA.No.1150 of 2017 dated 27.09.2018, High Court of Madras, National Insurance Co. Ltd., Vs. Karuppiah and Others

11. In the present case, the decision arrived is that the Insurance company is liable to pay only to the extent of coverage of policy and in this case, policy has been raised before the Tribunal which is marked as Ex.R1. The appellant also brought to the notice of this court that the Personal Accident Coverage for owner or driver is limited to Rs.1,00,000/- and further the premium is also paid only for Compulsory Personal Accident Cover of owner / driver. Hence, the appellant relied upon this cases, in which, the liability of this Insurance Company is limited to Rs.1,00,000/-

12. The copy of the policy also submitted before this Court. On the side of the appellant, it is vehemently contended by stating that Ex.R1 is a policy and the Personal Accident Coverage for owner-cum-driver is limited to Rs.1,00,000/-. Moreover, the accident occurred only due to the own negligence of the petitioner and the vehicle also belongs to the injured person. Hence, it is vehemently contended by the appellant/Insurance Company by filing the policy that the petitioner is the owner on the date of accident and therefore he

is not entitled for the compensation as claimed in the petition. Further, the policy Ex.R1 also reveals the fact that as per Personal Accident Coverage can claim only to the extent in which it was taken regarding the said one. Hence he is entitled only to the limit to the Personal Accident Coverage and he cannot claim any compensation as claimed in the petition. Hence in this case, as per the terms of the contract of the Insurance Company, the liability is confined to only Rs.1,00,000/- and even no interest will be awarded on the exceeding amount. Hence, the award of the Tribunal directing the appellant to pay a sum of Rs.4,20,733/- is set aside and the Insurance Company's liability is restricted to Rs.1,00,000/- and the respondent is entitled for the same.

13. In the result, this Civil Miscellaneous Appeal is partly allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

14. It is represented by the learned counsel for the appellant that they have already deposited 50% of the award amount. Hence, the appellant is permitted to withdraw excess amount leaving Rs.1,00,000/- with interest.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

gv

To

1.The Motor Accident Claims Tribunal,
(Chief Judicial Magistrate) Perambalur.

2.The Section Officer,
V.R. Section,
High Court, Madras.

+1cc to M/s.D. Bhaskaran, Advocate SR.67825
+1cc to Mr.R.P.Muruganraja, Advocate SR.68596



C.M.A.No.1441 of 2015
and
M.P.No.1 of 2015

MR(CO)
CB(03/01/2020)