IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.02.2019

CORAM:

THE HONOURABLE MR. JUSTICE RMT.TEEKA RAMAN

C.M.A.No.2941 of 2011 and
M.P.No. 1 of 2011

The New India Assurance Co. Ltd.,
Karaikal, rep. by its Branch Manager,
149, Bharathiyar Road,
Karaikal. ...Appellant

vs.

N.Arumugam ... Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and decree dated 09.11.2010 made in M.C.O.P.No. 56 of 2010, on the file of the Motor Accidents Claims Tribunal (Additional District Judge) at Karaikal.

For Appellant : Mr.M.Krishnamoorthy

For Respondent : Mr.T.Sai Krishnan

JUDGMENT

This Civil Miscellaneous Appeal is filed by the New India Assurance Company Limited, challenging the Judgment and decree dated 09.11.2010, in M.C.O.P.No. 56 of 2010, on the file of the Motor Accidents Claims Tribunal (Additional District Judge) at Karaikal. They have filed this appeal on the question of non-coverage of Insurance Policy conditions.

2. The brief case of the respondent/claimant is as follows:

On 23.08.2009, at about 22.00 hours, the respondent/claimant was travelling in a motorcycle bearing Registration No. PY 02 D 6811 towards North on the Nagore main road. While he was coming near Bhugari Hotel, Neravy a cow crossed the road from West to East, and so, the respondent/claimant applied sudden brake in order to avoid hitting the cow, as a result of which, he fell down and sustained injuries. He was immediately taken to the Government General Hospital, Karaikal and was treated as an inpatient. It is his contention that, even after discharge, he was taking continuous treatment till date and he also underwent a major operation at KMC Hospital, Karaikal.

3. According to the respondent/claimant, he is a fisherman and the only breadwinner of his family. On account of the accident, he sustained fracture in his right leg and unable to pursue his work. Therefore, he filed the above said claim petition under Section 166(1) of the Motor Vehicles Act, 1988 seeking compensation for the injuries sustained by him.

4. The New India Assurance Company Limited contested the claim petition. The learned Judge, based on the evidences, namely, Insurance Policy (Ex.P4) and Driving Licence (Ex.P6) had come to the

conclusion that the respondent/claimant (owner of the motorcycle bearing Registration No. PY 02 D 6811) has insured his vehicle with the present appellant and also had valid driving licence on the date of the accident. The learned Judge has further recorded that the policy issued by the present appellant includes personal accident to the owner-cum-driver to an extent of Rs.1,00,000/- which clearly proves the fact that, the respondent/claimant is covered under the policy, and accordingly, awarded a compensation of Rs.1,00,000/- together with interest at the rate of 7.5% per annum to the respondent/claimant.

5. Heard both sides and perused the materials available on record.

6. A perusal of the Insurance Policy (Ex.P4) clearly shows that the policy includes personal accident to the owner-cum-driver to an extent of Rs.1,00,000/-. Since the respondent/claimant is the owner of the motorcycle bearing Registration No. PY 02 D 6811, the present appellant is liable to indemnify him. It is seen from the Discharge slip issued by the G.H., Karaikal (Ex.P2) and Discharge summary issued by Karaikal Medical Centre (Ex.P3) that the respondent/claimant has sustained fracture of right tibia condyle and that he was re-admitted on 25.08.2009 at karaikal medical Centre. The learned Judge has rightly

considered all the aspects and awarded a sum of Rs.1,00,000/- to the respondent/claimant. Hence, by no stretch imagination the award passed by the learned Judge can be said to be on the higher side and the appeal is liable to be dismissed.

7. In the result,

(i) The Civil Miscellaneous Appeal is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

(ii) The quantum of compensation awarded by the Tribunal is upheld.

(iii) The present appellant - New India Assurance Company Limited is directed to deposit the entire compensation awarded by the Tribunal (if not already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit to the credit of M.C.O.P.No. 56 of 2010, dated 09.11.2010, on the file of the Motor Accidents Claims Tribunal (Additional District Judge) at Karaikal. within a period of eight weeks from the date of receipt of a copy of this order.

(iv) On such deposit being made, the respondent/claimant is permitted to withdraw the entire amount after following the due process of law.

08.02.2019

Index : Yes/No
Internet : Yes/No
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To

The Motor Accidents Claims Tribunal,
Additional District Judge,
Karaikal.

RMT.TEEKA RAMAN, J.

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