

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.03.2020

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

C.M.A.No.1017 of 2016
and
C.M.P.No.7714 of 2016

The Branch Manager,
Oriental Insurance Company Limited,
Tiruvannamalai. Appellant

Vs.

1.Poongavanam
2.Selvi
3.Indira
4.Kala
5.Amutha Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the decree and judgment dated 5th day of November, 2015, made in M.C.O.P.No.108 of 2013 on the file of Motor Accident Claims Tribunal, (Special Sub Court), Tiruvannamalai.

For Appellant : Ms.Elveeraravindran

For Respondents: M/s.A.Subadra

For Mr.F.Terry Chella raja
[R1 to R5]

JUDGMENT

The civil miscellaneous appeal is filed against the judgment and decree dated 05.11.2015 passed in M.C.O.P.No.108 of 2013.

2. The claim petition was filed under Section 163(A) of the Motor Vehicles Act, 1988 and Section 3 of the Tamil Nadu Motor Accident Tribunal Rules, 1989, claiming a sum of Rs.10,00,000/- as compensation for the death of one Mr.Mani.

3. The case of the petitioner is as explained hereunder:

On 28.11.2008 at about 2.00 A.M., the deceased Mani was

driving his own Lorry bearing Registration No.TAL-6725 from Tiruvannamalai towards Bangalore. When the said Lorry was proceeding at Tiruvannamalai to Krishnagiri Road near Chinnapanamutlu Gowtham Dhaba Hotel, a cow suddenly crossed the road and the driver of the lorry applied the break, lost control over the vehicle and hit against the Tamarind Tree. In the said accident, the above said Tr.Mani sustained injuries and then after continuous treatment died on 08.1.2009. The first petitioner is the wife and 2 to 5 petitioners are the daughters of deceased Tr.Mani. The deceased Tr.Mani was earning Rs.3,200/- per month as a owner cum driver of the lorry. Due to the death of Tr.Mani, the petitioners and their family members became helpless and put to great loss. The S.I of Police, Kanthikuppam Police Station at Krishnagiri District had registered a case in Cr.No.35/2009 U/Sec.279, 337, 304(A) IPC. The offending vehicle belongs to the deceased Tr.Mani and the vehicle is insured with respondent's insurance company. Hence the petitioners claim Rs.10,00,000/- as compensation, which is to be paid by the respondent.

4. The Insurance company filed a counter affidavit before the Claims Tribunal, setting out the defense as under:

The petition is false, vexatious and not sustainable both on law and on facts. The respondent does not admit any of the allegations contained in the petition save those that are specifically admitted herein and put the petitioners to strict proof. This respondent in the first instance submit that the liability of this respondent is subject to the terms and conditions of the policy and any violation of conditions of policy will disentitle the petitioners from claiming any relief against this respondent. The owner cum driver of the lorry is not a third party. No special premium is paid for the owner's liability. There was delay in lodging the F.I.R.. The insurance company is not liable to pay compensation for the negligence of the owner cum driver of the lorry. No postmortem was conducted on the body of the deceased. The owner of the vehicle died due to some other reasons. The petitioners are not entitled to claim compensation as the policy of insurance covers only to third parties. The petitioners are not the legal heirs of the deceased Mani. The age and income of the deceased mentioned in the petition is not correct. Hence, the petition is liable to be dismissed.

5. The Tribunal adjudicated the issues with reference to the documents and evidences produced by the respective parties and regarding the liability to pay compensation for the death of owner cum driver of the Lorry bearing Registration No.TAL 6725, the Tribunal arrived a finding that the claimant being legal

representative of the deceased Mani are not entitled for compensation under the policy marked as Ex.R1 as the said Mani met with an accident, while he was driving the Lorry as owner cum driver and the policy taken by him is only an Act Policy. The Tribunal rejected the compensation on the ground that it is an Act policy, and the Accident Claims Tribunal cannot grant compensation. The Policy was marked as Ex.R1, is a stand alone policy and independent and therefore, based on the said policy, the compensation cannot be claimed. However, the Tribunal further adjudicated whether the petitioners are entitled to compensation under the personal accident policy of insurance? If so, what shall be the quantum and from whom?

6. As far as the personal accident policy is concerned, the Tribunal relied on certain judgments. The Tribunal considered the personal accident policy marked as Ex.R2 and relied on the judgment in the case of Bajaj Alliance General Insurance Company Limited, Vs. C.Ramesh, reported in 2013(1) TN MAC 325. In the personal accident policy, the maximum compensation shall not exceed the amount mentioned in the policy. Therefore, the Tribunal formed an opinion that the fixed compensation as per the personal accident policy is to be granted in favour of the claimant. The Tribunal further referred two other judgments and held that the Tribunal has got jurisdiction to entertain the claim petition for grant of compensation under the personal accident policy.

7. This Court is of the considered opinion that the personal accident individual policy marked as Ex.R2 is a stand alone policy and admittedly, not under the Motor Vehicles Act. The Motor Vehicles Act being a special legislation and the Motor Accident Claims Tribunal is constituted to deal with the accident claims, specifically and only under the provisions of the Motor Vehicles Act, the said Tribunal cannot have jurisdiction to deal with the other policies issued by the Insurance companies and in such an event, the policy holder is entitled to claim benefit under the stand alone policy by approaching the appropriate forum.

8. It is relevant to consider that the Motor Vehicles policies are issued by the Insurance companies for the purpose of grant of compensation i.e., the language employed is "compensation". However, in the personal accident policy, it is clearly stated that the "benefit" is to be granted. Thus, the word compensation adopted under the Motor Vehicle Policies cannot be equated with the "benefits" to be granted under the personal accidents policy, which is independent and unconnected

with the provisions of the Motor Vehicles Act as well as the compensation to be granted under the Motor Vehicles Act. This being the basic difference in respect of the personal accident policy, the Tribunal cannot have any jurisdiction, so as to adjudicate the issues with reference to such stand alone policies and if such a power is granted, then the scope of the powers conferred under the Tribunal is exceeded and therefore, this Court is of the considered opinion that the Tribunal has erroneously exercised its jurisdiction, so as to grant the benefit under the personal accident policy.

9. Each policy is a contract. The terms and conditions of the policies are binding on the parties to the policy. When the contractual obligations between the parties with reference to the Motor Vehicles Act is not established, then the Tribunal cannot have any jurisdiction to entertain such disputes, which all are unconnected with the provisions of the Motor Vehicles Act. Thus, the Tribunal, on receipt of any claim petition, at the first instance, must examine, whether the policy coverage is with reference to the Motor Vehicles Act or with reference to certain benefits, which is unconnected with the provisions of the Motor Vehicles Act. Only if it is a compensation, which is agreed under the policy and the claim petition is filed, claiming compensation under the Motor Vehicles Act, then alone, the Motor Accident Claims Tribunal would get jurisdiction to entertain the claim petition and decide the issues, but not otherwise. Therefore, the Motor Accident Claims Tribunal are duty bound to examine the nature of the policy as well as the terms and conditions of the contract, at the first instance, before adjudicating the issues with reference to the grant of compensation. In all such cases, the issue regarding the maintainability is to be taken as a preliminary issue and only after deciding the preliminary issue, the other issues can be taken up for consideration by the Motor Accident Claims Tribunal. In the event of adjudicating all the issues together, undoubtedly, the same would cause prejudice to the claimant also in view of the fact that the long pendency of the claim petition would also deprive the claimants from claiming the benefit under the personal accident policy. Contrarily, if the issue regarding maintainability is decided, at the first instance, then the claimants will get an opportunity to approach the competent forum for the purpose of claiming the benefit of personal accident policy and the Tribunals are bound to consider all these aspects, in view of the fact that all these are beneficial provisions and the policy is also for the benefit of the affected person. Thus, the Courts must be doubly cautious in entertaining such claim petitions.

10. The judgments relied on before the Claims Tribunal may not have relevance with reference to the facts and circumstances in the present case on hand and this apart, the powers conferred on the Motor Accident Claims Tribunal has not been elaborately adjudicated by the Courts in that judgment. When there is a provision to entertain a claim petition in respect of the policies, under the Motor Vehicles Act, then the other policies, which all are unconnected with the Act, cannot be entertained by the Motor Accident Claims Tribunal and the beneficiary of such policies are bound to approach the competent Forum for the purpose of getting the benefit.

11. This being the factum established, this Court is of the considered opinion that the Tribunal has committed an error in exercise of its jurisdiction and entertained the claim petition in violation of the Provisions of the Motor Vehicles Act. It is an admitted fact that the Tribunal granted compensation based on the personal accident policy, which cannot be granted.

12. Accordingly, the judgment and decree dated 05.11.2015 passed in M.C.O.P.No.108 of 2013 is set aside and consequently, C.M.A.No.1017 of 2016 stands allowed. It is made clear that the respondents/claimants are at liberty to approach the competent Forum for the purpose of claiming benefits under the personal accident policy by following the procedures as contemplated. The awarded amount already deposited by the appellant before the Tribunal is to be reimbursed. In this regard, the appellant is permitted to withdraw the said amount by filing an appropriate application and the payments are to be made through RTGS. No costs. Connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS VI)

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Sub Assistant Registrar

To

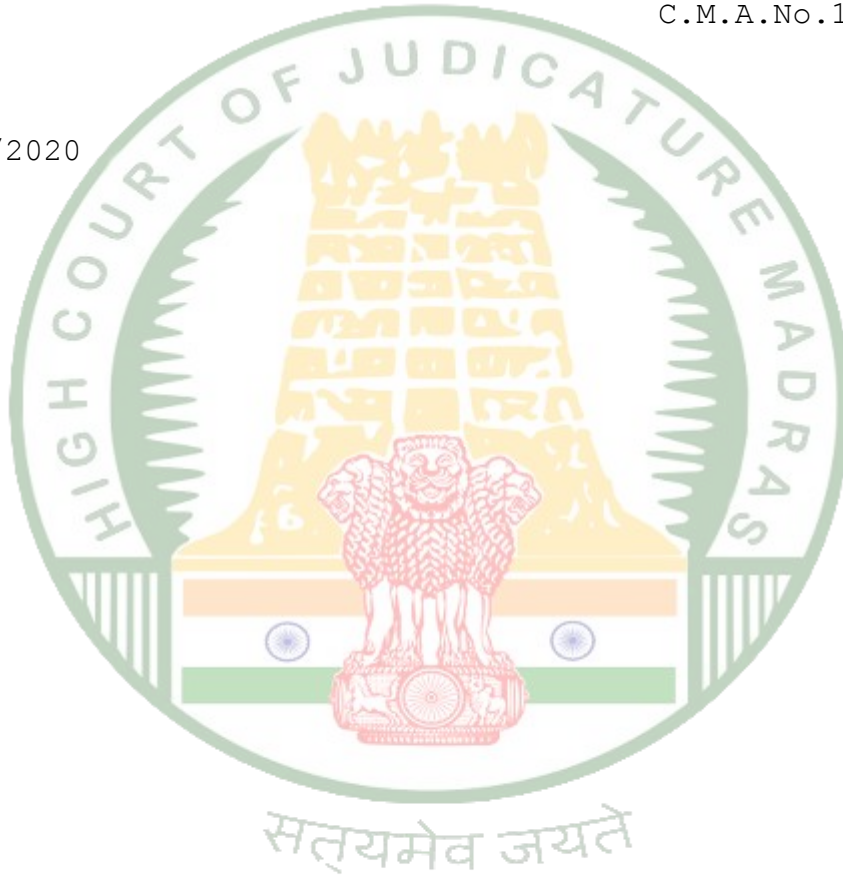
1.The Special Sub Court,
(Motor Accidents Claims Tribunal),
Tiruvannamalai.

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

+1cc to M/s.Elveera Ravindran, Advocate Sr.22592
+1cc to M/s.M.Malar, Advocate Sr.22291

C.M.A.No.1017 of 2016

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srg 22/09/2020



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