IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :16.10.2020

Pronounced on :22.10.2020

Coram:

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

C.M.A.No.1192 of 2016
and
C.M.P.No.9018 of 2016

The National Insurance
Company Ltd.,
By its Branch Manager,
No.7, Raja Veedhi
Gobichettipalayam Town and
Tauk, Erode Main Road,
Erode District,
Pin 638 476. .. Appellant /Respondent

/versus/

Munusamy .. Respondent/Petitioner

Prayer: Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, against the judgment and decree dated 25.02.2015 in M.C.O.P.No.186 of 2014 on the file of the Motor Accident Claims Tribunal(Subordinate Judge) at Gobichettipalayam.

For Appellant :Mrs.R.Sreevidhya

For Respondent :Mr.Ma.P.Thangavel

JUDGMENT
(This case has been heard through Video Conference)

This appeal is filed by the Insurance Company, being aggrieved over the liability fixed on it by the Tribunal in the claim petition filed by the accident victim in a hit and run case.

2.On 16.03.2013, at about 9.00 a.m., when the claimant was travelling in his TVS Super XL heavy duty bearing Reg.No.TN 36 H 4339 along with one Sakunthala near Pariyur Vellalpalayam

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Diversion road, Gobi to Erode main road, an unknown car rash and negligently hit the motorcycle and ran away. The rider of the motorcycle and the pillion rider Sakunthala both got severely injured and they were taken to the Government Hospital, Gobichettipalayam in an Ambulance. A case was registered against the unknown driver of the hit and run car. The claimant sustained fractures above his right foot, laceration wound on his back and left elbow. He was treated as inpatient in S.K.Hospital, Gobichettipalayam. External fixation for the fracture and skin-grafting was done. Petition filed claiming Rs.5,00,000/- as compensation on the ground that due to the accident caused by the hit and run vehicle, there was loss of earning Rs.15,000/- p.m, as mason under Section 140 and 166 of the Motor Vehicles Act.

3.The claim petition was opposed by the Insurance Company on the ground that the claimant is the owner of the vehicle insured. It is a case of hit and run. Negligence is on the part of the car, which has hit the claimant and the liability of the insurance company is only to indemnify the owner against the third party claim. The claimant/owner-cum-insured is not a third party to the contract. He has not paid any additional premium for personal accident. The policy is an act only policy. In this case, the Tribunal has no jurisdiction to try hit and run case. Hence, the claim petition is not maintainable.

4.The Tribunal, referring the judgments rendered in National Insurance Company Ltd., v. Krishnan reported in 2014 ACJ 1862 and National insurance Company Ltd., v. T.G.Parthasarathy and another reported in 2013(1) MAC 67, rejected the defence of the insurance company and awarded a sum of Rs.1,51,460-00 as compensation.

5.In this appeal, the insurer has reiterated its defence stating that the Tribunal has failed to note the terms of policy, which covers only 3rd party and own damages. Admittedly, the accident occurred when an unidentified car came from behind and hit the claimant's two wheeler. When no additional premium for personal accident coverage is paid by the insured, the remedy is before the District Collector to claim compensation under Section 140 of the Motor Vehicles Act and not before the Motor Accident Claims Tribunal under Section 166 of the Motor Vehicles Act.

6.The learned counsel would rely upon the recent judgment of this Court rendered in M/s The Cholamandalam MS General Insurance Company Limited v. Ramesh Babu dated 02.09.2020 wherein His Lordship The Hon'ble Justice Mr.S.M.Subramaniam, has observed as below:-

"30.When the Package Policy, more specifically,

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the Personal Accident Cover is claimed by the Policy holder, then the nature of the policy as well as the terms and conditions agreed between the parties are to be taken into account before entertaining a claim petition. It is not as if, all claims for compensation can be adjudicated by the Tribunal. The scope of the jurisdiction as well as the adjudicatory power is limited with reference to the provisions of the Motor Vehicles Act. There may be several policies, which all are contractual in nature. Those contractual policies are between the parties, on certain specific terms and conditions and the said contractual policy cannot be construed as statutory policy. In the absence of any statutory liability on the part of the insurance company, the provisions of the Motor Vehicles Act cannot be invoked nor an adjudication can be done before the Tribunal. Mere contractual liability are not enforceable before the Motor Accident Claims Tribunal. The very purpose and object of the Motor Accident Claims Tribunal are to adjudicate the Claim Petitions and grant 'just compensation' with reference to the provisions of the Motor Vehicles Act. The Tribunal has got powers to fix quantum of compensation and the procedure to fix just compensation are also guidelined in many number of judgments both by the Apex Court as well as by various High Courts across the country. Therefore, the enforceability is also to be taken note of. If a particular Personal Accident Policy is contractual in nature, then statutory liability cannot be fixed on the Insurance Company. Violations of terms and conditions of contract, the party is affected or aggrieved, then entitled to approach the competent Forum to enforce the contractual obligations. Once, it is a contract and terms and conditions are agreed between the parties, which are reduced in writing and signed by the parties, then it is a contract under the provisions of the Indian Contract Act and the terms and conditions of the Contract Act are enforceable before the competent Court of Law and not before the Motor Accident Claims Tribunal under the Motor Vehicles Act. "

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7.The learned counsel appearing for the respondent/claimant would submit that the claimant being owner of the vehicle had insured the vehicle for own damage basic and third party basic. Being a package policy, no additional premium need to be paid. Referring Bajai Alliance v. C.Ramesh, decided on 08.0.2013 reported in 2013 (1) TNMAC 325 learned counsel would submit that under the Motor Vehicles Act being a beneficial legislation the accident victim is entitled for just compensation. The Insurance Company having collected premium for own damage as well as for third party claim cannot decline to indemnify the loss occurred to the owner-cum-insured only because the accident was caused by an unknown hit and run vehicle. Having collected premium for own damages, the Insurance Company there is a contractual liability to pay the limited liability occurred under the policy under Section 166 of the Motor Vehicles Act.

8.In response to this submission, the learned counsel for the Insurance Company/appellant would submit that the premium collected for own damage does not cover the cases of hit and run. In such cases, the statutory liability to compensate is upon the Government/District Collector under Section 140 of the Motor Vehicles Act. Further, the limited liability of compensating under the own damage or personal accident will arise only in case of death (or) loss of limb (or) loss of eye sight (or) permanent total disability. In this case, the claimant has not paid any additional premium for personal accident cover and also the injury caused due to hit and run vehicle does not fall any of the category covered under own damage or personal accident cover.

9.Under the Motor Vehicles Act, the motor vehicles are mandatorily insured for the third party liability coverage, which is called as act only policy. For own damages and personal accident cover for the owner-cum-driver and passengers, if any, additional premium has to be paid and the liability of the insurer who indemnify depends on the limit mentioned in the policy. The statutory coverage to compensate in terms of Section 147 of the Motor Vehicles Act will arise whenever the vehicle is insured under any of the above three categories. As far as the third party liability cover it is now a mandatory requirement. Own damage cover and personal accident cover is optional. If the owner of the vehicle had paid additional premium, then alone, the insured will be entitled to get indemnify the claim. The insurance company will have legal duty to indemnify the insured under the contract. If the vehicle owner had not paid any additional premium for personal accident cover, the owner/driver have no contractual right to claim compensation from the insurer.

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10.In a case of hit and run, Section 140 of the Motor Vehicles Act provides remedy for the victims. In alternate, under Section 163 A of the Motor Vehicles Act, the insured without proving negligence of the third party vehicle can lay claim on the principles of no fault. In such cases, the compensation is payable when death or total permanent disability occurs to the claimant.

11.In the instant case, the insurance coverage is for own

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damage and third party basic. Even assuming that the premium Rs.70.50 paid under own damage basic will cover the claimant who is the owner of the vehicle and had sustained injury due to the negligence of unknown hit and run vehicle, to maintain the claim petition, the nature of the injury sustained must be a total permanent disability.

12.Looking at the discharge summary marked as Ex.P8, this Court finds that the treatment given is under "under 'C' arum commiunted left fibula fracture stabilized with 'K' wire, right foot dorsum would SSG done". The said injuries does not fall under the definition of permanent total disability. Therefore, the award of the Tribunal under Section 166 of the Motor Vehicles Act, is contrary to law and terms of insurance policy. Hence, liable to be set aside.

13.It is to be noted that in the recent judgment M/s The Cholamandalam MS General Insurance Company Limited v. Ramesh Babu dated 02.09.2020, which has been referred by this Court in the earlier part of the judgment, the learned Single Judge has observed that the omission on the part of the Tribunal to verify the claim and the nature of the insurance policy at the first instance unnecessarily drives the claimant to the Court without knowing that the petition is not maintainable before the Tribunal and has given direction to the Court below to verify the claim petition with reference to the nature of the policy and determine its jurisdiction at the inception. This Court re-affirms the above observation of the learned Single Judge.

14. Accordingly, the judgment and decree dated 25.02.2015 passed by the Motor Accident Claims Tribunal/Sub Court, Gobichettipalayam in M.C.O.P.No.186 of 2014 is set aside and the Civil Miscellaneous Appeal is allowed with liberty to the claimant to approach appropriate forum seeking compensation under Section 140 of the Motor Vehicles Act.

15.If any such petition is filed, the period spent for the present litigation shall be condoned. If the appellant/Insurance Company has deposited the award amount before the Tribunal as per order of this Court dated 14.06.2016, then they are permitted to withdraw the said amount by filing an appropriate application. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

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Sub Assistant Registrar

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To

The Motor Accident Claims Tribunal,
Subordinate Court, Gobichettipalayam.

+1cc to Ma.P.Thangavel, Advocate SR.34916

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