

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04-03-2020

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

C.M.A. No.448 of 2016

And

C.M.P.No.3404 of 2016

Royal Sundaram Allianz Insurance Company Ltd.,
Buz Plaza, 3rd Floor,
No.5G, Lawsons Road,
Cantonement,
Trichy.

... Appellant/Respondent

vs.

Somu

... Respondent/Petitioner

The Civil Miscellaneous Appeal is preferred under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 12.08.2015 passed in M.C.O.P.No.94 of 2012 on the file of the learned Principal District Judge, Principal District Court-cum-Motor Accidents Claims Tribunal, Ariyalur.

For Appellant : Ms.C.Harini for
Mr.N.Vijayaraghavan

For Respondent : Mr.S.Giridtharan

J U D G M E N T

The present Civil Miscellaneous Appeal is directed against the judgment and decree dated 12.08.2015 passed by the learned Principal District Judge, Principal District Court -cum- Motor Accidents Claims Tribunal, Ariyalur in M.C.O.P.No.94 of 2012.

2. The Royal Sundaram Allianz Insurance Company Limited is the appellant filed the present Civil Miscellaneous Appeal questioning the liability.

3. The accident occurred on 22.08.2011 at T.Palur Emaneri Bund. T.Palur Police Station registered a case in Crime

No.161 of 2011 under Sections 279 and 337 of IPC.

4. In the claim petition, the respondent/claimant has stated that he sustained injuries of fracture in right wrist, elbow and multiple injuries all over the body. Thus, he filed a claim petition, seeking compensation of Rs.5 lakhs.

5. The Tribunal adjudicated the issues and the following points are formulated for consideration:-

"(1) Whether the accident had occurred due to the rash and negligent driving of respondents ?

(2) Whether the petitioner is entitled to get compensation ?

(3) To what amount ?"

6. As far as Point No.1 is concerned, the Tribunal arrived a conclusion that the accident had occurred due to rash and negligence on the part of the claimant himself and with reference to compensation, the Tribunal considered various aspects and assessed the disability as 35% and accordingly, granted compensation of Rs.70,000/- for disability and under various other heads, compensations were granted and accordingly, total compensation of Rs.1,52,000/- was awarded by the Tribunal.

7. The learned counsel appearing on behalf of the appellant mainly contended that the appellant/Royal Sundaram Allianz Insurance Company Limited is not liable on the ground that there is no insurance coverage as far as the case of the respondent-claimant is concerned. Admittedly, the policy is personal accident coverage policy for owner/ driver and the said policy would not cover such nature of injuries and accordingly, the learned counsel for the appellant solicited the attention of this Court with reference to the policy, which was marked as a document before the Tribunal.

8. Perusal of the policy reveals that Section IV - Personal Accident Cover for Owner-Driver, which reads as under:-

"SECTION IV - PERSONAL ACCIDENT COVER FOR
OWNER-DRIVER

Subject otherwise to the Terms, Exceptions, Conditions and Limitations of this Policy, the Company undertakes to pay compensation as per the following scale for bodily injury/death sustained by the owner-driver of the vehicle in direct connection with the vehicle insured or whilst mounting into/dismounting from or travelling in the insured vehicle as a co-driver, caused by violent

accidental external and visible means which independent of any other cause shall within six calendar months of such injury result in:

Details of injury	Scale of Compensation
i) Death	100% of CSI
ii) Loss of two limbs or sight of two eyes or one limb and sight of one eye	100% of CSI
iii) Loss of one limb or sight of one eye	50% of CSI
iv) Permanent Total Disablement from injuries other than named above.	100% of CSI

Provided always that

1) The Compensation shall be payable under only one of the items (i) to (iv) above in respect of the owner-driver arising out of any one occurrence and the total liability of the Insurer shall not in the aggregate exceed the sum of Rs.2 lakhs during any one period of Insurance.

2) No compensation shall be payable in respect of death or bodily injury, directly or indirectly, wholly or in part, arising or resulting from or traceable to (a) intentional self-injury, suicide or attempted suicide, physical defect or infirmity or (b) an accident happening whilst such person is under the influence of intoxicating liquor or drugs.

3) Such compensation shall be payable directly to the Insured or to his/her legal representatives whose receipt shall be the full discharge in respect of the injury to the Insured.

4) This cover is subject to

(a) The owner-driver is the registered owner of the vehicle insured herein;

(b) The owner-driver is the Insured named in this policy.

(c) The person driving holds an effective driving license at the time of the accident and is not disqualified from holding or obtaining such a license.

(d) The person holding an effective Learner's license may also drive the vehicle and that such a person satisfies the requirements of Rule 3 of the Central Motor Vehicles Rules, 1989.

(e) Where more than one vehicle is owned by the Insured, he/she can opt for this under one vehicle only."

9. Reading of the conditions stipulated in the policy with reference to Personal Accident Cover for Owner-Driver, this Court is of the considered opinion that the Tribunal has committed an error in not considering the nature of the policy. Contrarily, the Tribunal proceeded on the ground that there is a coverage of policy and the respondent-claimant sustained injuries and taken treatment and therefore, the respondent-claimant is entitled for compensation. The Tribunal is bound to see the nature of the policy and the coverage as well as the terms and conditions stipulated in the policy.

10. When the question of liability is raised by the Insurance Company, the Tribunal is bound to adjudicate the said issue for the purpose of arriving a conclusion that the respondent-claimant is entitled for compensation or not.

11. This being the primary question to be considered, the Tribunal, in the present case, has failed to consider this aspect and awarded compensation on the ground that there is a policy and the accident was established and the medical treatment was also established and accordingly, awarded compensation by fixing the disability as 35%.

12. The learned counsel appearing on behalf of the respondent- claimant opposed the contentions by stating that though the policy is Personal Accident Cover, the Tribunal has considered the fact that regarding the nature of the injuries and awarded compensation. Thus, there is no infirmity.

13. This Court is of the considered opinion that the terms and conditions stipulated in the policy is of paramount importance for the purpose of deciding the liability. The Insurance Company is not responsible in respect of the accident, which is not covered under the policy. The policy being a contract and the claimants are entitled to claim compensation only with reference to the terms and conditions of the contract and certainly not beyond the conditions agreed between the parties. Thus, the policy and the terms and conditions stipulated therein are the factors to be ascertained for the purpose of fixing the liability as far as the Insurance Company

is concerned.

14. This being the factum established before this Court, this Court is of the considered opinion that the Tribunal has committed an error in not considering the vital ground raised by the appellant that there is no coverage in the policy and accordingly, the judgment and decree dated 12.08.2015 passed by the learned Principal District Judge, Principal District Court-cum-Motor Accidents Claims Tribunal, Ariyalur in M.C.O.P.No.94 of 2012 is quashed and consequently, C.M.A.No.448 of 2016 stands allowed. However, there shall be no order as to costs. Consequently connected miscellaneous petition is closed.

15. The amount deposited by the appellant/Insurance Company, if any, in the credit of MCOP No.94 of 2012 on the file of the Principal District Court-cum-Motor Accidents Claims Tribunal, Ariyalur, is permitted to be withdrawn by the appellant/Insurance Company, by filing an appropriate application.

Sd/-
Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

Svn

To

1.The Principal District Judge,
Principal District Court-cum-
The Motor Accidents Claims Tribunal,
Ariyalur.

2.The Section Officer,
VR Section, High Court,
Madras-104.

+lcc to Mr.S.Giritharan, Advocate SR.19203

SR(CO)
CB(05/10/2020)

CMA No.448 of 2016