IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.11.2020

CORAM

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

C.M.A.No. 2570 of 2019

Vijayaraghavan,
S/o. Chengottuvelan,
No.5/15/114/A, Thelunganoor,
Valasaiyur Village,
Kullampatti Post,
Ayothiyapattinam Via,
Salem Taluk and District. ... Appellant/Petitioner

Vs.

1. Kumar,
S/o.Muthu,
Paruthikadu, Poovanoor Post,
Ayothiyapattinam via,
Salem Taluk and District.

2. L & T Finance Limited,
5th Floor, K.G.N. Towers,
No.62, Ethiraj Salai,
Egmore, Chennai-600 105.

3. ICICI Lombard General Insurance
Company Ltd.,
No.414, Veer Savarkar Marg,
Near Sidhi Vinayagar Temple,
Prabadevi, Mumbai-400 025.
... Respondents/Respondents

PRAYER:-

Civil Miscellaneous Appeal preferred under Section 173 of Motor Vehicles Act against the judgment and decree in M.C.O.P. No.2060 of 2015, dated 24.09.2018 on the file of the Motor Accident Claims Tribunal, Special Sub-Court No.II, Salem.

For Appellant : Mr.C.Prabakaran

For Respondents : R1 & R2 - No appearance

Mrs.R.Sreevidhya for R3

J U D G M E N T

The claimant before the Tribunal is the appellant, filed this appeal challenging the award passed by the Motor Accident Claims Tribunal, Special Sub-Court No.II, Salem in MCOP. No. 2570 of 2019, dated 24.09.2018.

2. The claimant is the owner of vehicle of TATA Ace vehicle bearing Regn. No.TN-54 K-3723, which was hypothecated with the 2nd respondent and insured with the 3rd respondent. On 30.06.2015 at about 04.00 p.m. the appellant travelled in the said vehicle, which was driven by the 1st respondent herein, due to the rash and negligent driving, the 1st respondent dashed the vehicle in the side median, in which, the appellant/claimant sustained serious injury. The claimant was engaged in wholesale of garlic and onion business and earned a sum of Rs.15,000/- per month, due to the injury sustained in the accident, he has suffered serious disability, he is not able to continue his avocation and he has lost the business. Hence, claiming compensation of Rs.20 lakhs against the 3rd respondent insurance company, the claimant has filed the claim petition.

3. The insurance company has contested the claim petition on the ground that the petitioner, being the owner of vehicle and he has been the insured, he cannot maintain a claim petition against own insurer, and the insurance company is not liable to compensate the claimant. That apart, the quantum of compensation claimed by the claimant is excessive and speculative.

4. Before the Tribunal, the claimant has examined himself as P.W.1 and marked as many as 16 documents as Ex.P1 to P16. On the side of respondent insurance company, no witness was examined, however, marked as many as 3 documents as Ex.R1 to R3. The disability certificate issued by the medical board was marked as Ex.C1.

5. The Tribunal, after considering the materials available on record, has held that the accident was taken place due to the rash and negligent driving of 1st respondent, driver of the van. So far as quantum of compensation is concerned, the Tribunal, after elaborately considering the disability suffered by the claimant, had fixed the total compensation payable to the claimant as Rs.20,55,099/-, however, held that since the claimant cannot claim compensation against his own insurer, he is only entitled for a sum of Rs.2 lakhs towards personal accident cover and made the insurance company liable to pay compensation of Rs.2 lakhs along with interest at the rate of 7.5%. Now, challenging the same, the appellant is before this Court with this appeal.

6. Mr.C.Prabakaran, learned counsel appearing for appellant would submit that even though the appellant is the owner of the vehicle, he has travelled in the vehicle as a owner of the goods. So, as per the terms of policy, the insurance company is liable to pay compensation to the owner of goods under Sec.147 of Motor Vehicles Act. Even though the Tribunal has assessed the quantum of compensation for a sum of Rs.20,55,099/-, has erroneously granted only a sum of Rs.2 lakhs towards personal accident coverage.

7. Per contra, the learned counsel appearing for 3rd respondent insurance company would submit that the appellant is the owner of the vehicle and he is being insured, he cannot maintain a claim petition against his own insurance company. Under Sec.147 of Motor Vehicles Act, the insurance company is liable to indemnify the owner of the vehicle against a third party, and not to the owner of the vehicle. Even assuming that the appellant has travelled in the vehicle as owner of the goods, his claim is not maintainable as there is no statutory liability on the insurance company to pay compensation. However, the learned counsel would further submit that since there is a special contract under the personal accident cover, the claimants are entitled to a sum of Rs.2 lakhs, and the Tribunal has rightly awarded a sum of Rs.2 lakhs and there is no error in the judgment passed by the court below.

8. I have heard and considered the rival submissions made by learned counsel appearing for appellant as well as 3rd respondent and perused the records.

9. Admittedly, the claimant is the owner of the vehicle and the insurance policy is a comprehensive policy. The contention of the claimant is that, he has travelled in the vehicle as a owner of the goods carrying vegetables, and the claim is maintainable under Sec. 147 of Motor Vehicles Act. Sec.147 of Motor Vehicles Act deals with the requirements of insurance policy and the limits of liability, which reads as follows :-

> "147. Requirements of policies and limits of liability.—(1) In order to comply with the requirements of this Chapter, a policy of insurance must be a policy which—
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> (a) is issued by a person who is an authorised insurer; and 76
>
> (b) insures the person or classes of persons specified in the policy to the extent specified in sub-section (2)—
>
> (i) against any liability which may be incurred by him in respect of the death of or bodily injury to any

person, including 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 in a public place;

(ii) against the death of or bodily injury to any passenger of a public service vehicle caused by or arising out of the use of the vehicle in a public place:

Provided that a policy shall not be required—

(i) to cover liability in respect of the death, arising out of and in the course of his employment, of the employee of a person insured by the policy or in respect of bodily injury sustained by such an employee arising out of and in the course of his employment other than a liability arising under the Workmen's Compensation Act, 1923 (8 of 1923), in respect of the death of, or bodily injury to, any such employee—

(a) engaged in driving the vehicle, or

(b) if it is a public service vehicle engaged as a conductor of the vehicle or in examining tickets on the vehicle, or

(c) if it is a goods carriage, being carried in the vehicle, or

(ii) to cover any contractual liability.

Explanation.—For the removal of doubts, it is hereby declared that the death of or bodily injury to any person or damage to any property of a third party shall be deemed to have been caused by or to have arisen out of, the use of a vehicle in a public place notwithstanding that the person who is dead or injured or the property which is damaged was not in a public place at the time of the accident, if the act or omission which led to the accident occurred in a public place.

(2) Subject to the proviso to sub-section (1), a policy of insurance referred to in sub-section (1), shall cover any liability incurred in respect of any accident, up to the following limits, namely:—

(a) save as provided in clause (b), the amount of liability incurred;

(b) in respect of damage to any property of a third party, a limit of rupees six thousand:

Provided that any policy of insurance issued with any limited liability and in force, immediately before the commencement of this Act, shall continue to be effective for a period of four months after such commencement or till the date of expiry of such policy whichever is earlier.”

10. A careful reading of the provision would show that the insurance policy covers the liability incurred by the insured in respect of death or bodily injured to any person, including the owner of goods or authorised representative, carried the vehicle and it does not require the insurance company to assume the risk for the death or bodily injury of the owner of the vehicle, the liability of the insurance company is only to indemnify the insured against the liability incurred towards a third person or in respect of damages to the property of third party. Whereas, the insured viz., owner of vehicle has no liability to a third party, the insurance company need not indemnify that liability.

11. An insurance policy only covers the liability incurred by the insured in respect of death or bodily injury to any person including an owner of the goods or his authorised representative, carried in the vehicle or damage to the property of a third party caused by or arising out of the use of vehicle, the insurance company does not require to assume risk for death or bodily injury to the owner of the vehicle. If any premium paid on own damages is only for covering the liability towards damages to the vehicle and not for injury to the owner, the owner of the vehicle can only claim compensation for the personal accident insurance, if any taken by him. The Hon'ble Supreme Court in the case of Dhanraj vs. New India Assurance Company Ltd. and another reported in 2004 (8) SCC 553, has held as follows :-

“10. In this case, it has not been shown that the policy covered any risk for injury to the owner himself. We are unable to accept the contention that the premium of Rs.4989 paid under the heading “Own damage” is for covering liability towards personal injury. Under the heading “own damage”, the words “premium on vehicle and non-electrical accessories” appear. It is thus clear that this premium is towards damage to the vehicle and not for injury to the person of the owner. An owner of a vehicle can only claim provided a personal accident insurance has been taken out. In this case, there is no such insurance."

12. In the case of National Insurance Company Ltd. vs. Ashalata Bhowmik and others reported in 2018 (9) SCC 801, the Hon'ble Supreme Court of India has held that, when the deceased being the owner of offending vehicle and he is victim of his own action, the legal representatives cannot maintain a claim petition making insurance company to pay compensation under Sec.166 of Motor Vehicles Act. The relevant portion of judgment reads as follows :-

> "7. We have carefully considered the submissions of the learned counsel made at the Bar and perused the materials placed on record. It is an admitted position that the deceased was the owner cum driver of the vehicle in question. The accident had occurred due to the rash and negligent driving of the vehicle by the deceased. No other vehicle was involved in the accident. The deceased himself was responsible for the accident. The deceased being the owner of the offending vehicle was not a third party within the meaning of the Act. The deceased was the victim of his own action of rash and negligent driving. A claimant, in our view, cannot maintain a claim on the basis of his own fault or negligence and argue that even when he himself may have caused the accident on account of his own rash and negligent driving, he can nevertheless make the insurance company to pay for the same. Therefore, the respondents being the legal representatives of the deceased could not have maintained the claim petition filed under Section 166 of the Motor Vehicles Act."

13. Recently, Hon'ble Supreme Court in the case of Ram Khiladi and another vs. United India Insurance Company and another reported in 2020 (1) TNMAC 1 (SC), has held that even a person, who has borrowed the vehicle from the owner of vehicle met with an accident, cannot claim compensation against the insurer as he steps into the shoes of the insured. The claimant cannot maintain a claim petition under Sec.163-A of the Motor Vehicles Act on the principles of no fault liability. The relevant portion of the judgment is reproduced hereunder :-

> "5.5. It is true that, in a claim under Section 163-A of the Act, there is no need for the claimants to plead or establish the negligence and/or that the death in respect of which the claim petition is

sought to be established was due to wrongful act, neglect or default of the owner of the vehicle concerned. It is also true that the claim petition under Section 163-A of the Act is based on the principle of No Fault Liability. However, at the same time, the deceased has to be a third party and cannot maintain a claim under Section 163-A of the Act against the owner/insurer of the vehicle, which is borrowed by him as he will be in the shoes of the owner and he cannot maintain a claim under Section 163-A of the Act against the owner and insurer of the vehicle bearing Regn. No.RJ-02 SA-7811. In the present case, the parties are governed by the Contract of Insurance and under the Contract of Insurance the liability of the Insurance Company would be qua third party only. In the present case, as observed hereinabove, the deceased cannot be said to be a third party with respect to the insured vehicle bearing Regn. No.RJ-02-SA-7811. There cannot be any dispute that the liability of the insurance company would be as per the terms and conditions of the Contract of Insurance. As held by this Court in the case of Dhanraj (supra), 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 authorised 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. In the said decision, it is further held by this Court that Section 147 does not require an Insurance Company to assume risk for death or bodily injury to the owner of the vehicle.

5.6. In view of the above and for the reasons stated above, in the present case, as the claim under Section 163-A of the Act was made only against the owner and insurance company of the vehicle, which was being driven by the deceased himself as borrower of the vehicle from the owner of the vehicle and he would be in the shoes of the owner, the High Court has rightly observed and held that such a claim was not maintainable and the claimants ought to have joined and/or ought to have made the claim under Section 163-A of the Act against the driver, owner and/or the insurance company of the offending vehicle i.e. RJ-29-2-2M-9223 being a third party to the said vehicle.”

14. In the instant case, admittedly, the claimant is the owner of vehicle, and he cannot maintain a claim petition against his own insurance company. Even assuming that he had travelled in the vehicle as a owner of goods, he cannot maintain a claim petition under Sec.166 of Motor Vehicles Act. Hence, the Tribunal has correctly awarded a sum of Rs.2 lakhs towards personal accident claim and this Court finds no illegality or irregularity in the order passed by the Tribunal. Accordingly, this Civil Miscellaneous Appeal stands dismissed. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

The Special Sub Judge-2,
Motor Accidents Claims Tribunal,
Special Sub-Court No.II, Salem.

C.M.A.No.2570 of 2019

VG-I(CO)
CS/26/08/2021