IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10-09-2020

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

C.M.A. No.4862 of 2019
And
C.M.P.No.28014 of 2019

TATA AIG General Insurance Company Limited,
1st Floor,
No.6, 7, Bye-Pass Road,
Trichy - 620 002. .. Appellant/3rd Respondent

vs.

1.Govindarajan ..1st Respondent/Petitioner

2.Viswanathan

3.Micro Office,
New India Assurance Company Limited,
Mecherry Post,
Salem District - 636 453.
.. Respondents 2 & 3/Respondents 1 & 2

The Civil Miscellaneous Appeal is preferred under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 25.07.2019 passed in M.C.O.P. No.537 of 2017 on the file of the learned Special Sub Judge, Special Sub Court-cum-Motor Accidents Claims Tribunal, Krishnagiri.

For Appellant : Ms.C.Harini for M/s.Gopalan Associates.

For Respondent-1: Mr.J.Pradeep

For Respondent-2: No Appearance

For Respondent-3: Mr.S.Dhakshnamoorthy

J U D G M E N T

The judgment and decree dated 25.07.2019 passed in M.C.O.P. No.537 of 2017 by the learned Special Sub Judge, Special Sub Court-cum-Motor Accidents Claims Tribunal, Krishnagiri, is under challenge in the present Civil Miscellaneous Appeal.

2. The learned counsel appearing on behalf of the appellant-Insurance Company mainly contended that the claim petition filed under Section 166 of the Motor Vehicles Act, 1988, is not maintainable, in view of the fact that the owner of the vehicle, which met with an accident, himself is the claimant. Thus, the claim cannot be entertained by the Tribunal.

3. The Tribunal has further committed an error in awarding a sum of Rs.2 lakhs under the Personal Accident Cover benefit covered by the policy, without considering the terms and conditions stipulated in the policy. The benefit of Personal Accident Cover is available only in respect of certain injuries specified in the terms and conditions of the policy and not otherwise. The claimant in the present case did not suffer any injury of the nature specified in the Personal Accident Cover and therefore, the award of Rs.2 lakhs to the claimant under the Personal Accident Cover is also unsustainable.

4. It is further contended that when the claim petition itself is not maintainable under Section 166 of the Act, the Tribunal has erroneously considered the Personal Accident policy and passed an award. Thus, the entire award is liable to be scrapped.

5. The learned counsel appearing on behalf of the respondent/claimant opposed the contentions of the learned counsel for the appellant-Insurance Company by stating that the claimant admittedly is the owner of the vehicle. However, he was travelling in the Car and the driver of the car was the other person and therefore, the owner is to be treated as a third party for the purpose of grant of compensation. In other words, it is contended that the owner of the car had not driven the vehicle, which met with an accident and therefore, he is a third party and accordingly, entitled for compensation. It is further contended that there is Personal Accident Cover under the policy and the Tribunal considered the Personal Accident Cover and accordingly, granted a sum of Rs.2 lakhs to the claimant. Thus there is no error or otherwise and the Civil Miscellaneous Appeal is liable to be dismissed.

6. The accident occurred on 09.03.2015 at about 00.30 A.M., at Salem to Karur NH Road, near by Iyengar Baker at Thulipatti. The Vangal Police Station, Karur District registered a case in Crime No.47 of 2015 under Sections 279 and 337 of IPC.

7. The claimant was travelling in the car bearing Registration No.TN-24-R-0957. Admittedly, the car in which the

claimant was travelling belongs to him and the claimant is the registered owner of the car.

8. As far as the accident is concerned, the Tribunal considered the documents and the evidences available on record and made a finding that the car bearing Registration No.TN-24-R-0957 driven by the driver Mr.Sabarinathan is responsible for the accident and the said Mr.Sabarinathan committed the act of negligence.

9. The findings of the Tribunal is unambiguous that the car, in which the claimant was travelling, dashed against the stationed lorry bearing Registration No.TN-28-Q-9777. Thus, the driver of the car had committed the act of negligence and accordingly, the issue was decided.

10. Therefore, the Tribunal has considered the case of the claimant for grant of compensation under the Personal Accident Cover Policy. The entire findings of the Tribunal reveals that the negligence in entirety is fixed on the driver of the car bearing Registration No.TN-24-R-0957, in which the claimant was travelling. Admittedly, the claimant, who is the owner of the car. Therefore, the Tribunal awarded a sum of Rs.2 lakhs under the Personal Accident Cover. Though the Tribunal arrived a compensation of Rs.5,81,979/-, fixing the liability on the appellant-Insurance Company, the quantum of compensation was restricted on the ground that the accident occurred due to the negligent act of the driver of the car and accordingly, a sum of Rs.2 lakhs was awarded by the Tribunal under the Personal Accident Cover.

11. This Court is of the considered opinion that when the maintainability of the claim petition was questioned, the said issue to be decided as preliminary issue, so as to arrive a conclusion whether any compensation can be granted to the claimant in the claim petition filed under Section 166 of the Motor Vehicles Act, 1988.

12. Admittedly, the claimant is the owner of the vehicle, which met with an accident. The claimant's vehicle driver is responsible for the cause of the accident. The driver Mr.Sabarinathan had driven the vehicle in a rash and negligent manner and dashed against the stationed lorry. Thus, the Tribunal arrived a conclusion that the car driver is responsible for the cause of the accident. The owner, being the claimant, is not covered under the policy. Undoubtedly, Personal Accident Cover is available. However, the Personal Accident Cover is not a statutory coverage and therefore, separate claim is to be made strictly in accordance with the terms and conditions stipulated in the policy, which all are agreed between the parties. The

Personal Accident Cover policy is a contractual policy and there is no statutory coverage. Thus, the claim petition filed under the Motor Vehicles Act, 1988 is not maintainable. If there is statutory coverage under Section 147(1) of the Motor Vehicles Act, 1988, the claim petition can be maintainable before the Motor Accident Claims Tribunal. In respect of all other contractual policies, the aggrieved person has to approach the Competent Forum and not the Motor Accident Claims Tribunal. Further, the Personal Accident Cover agreed between the parties are the statutory compensation. However, the statutory compensation is contemplated under the Act and therefore, the benefits to be granted under the contractual obligation cannot be equated with the compensation to be granted under the provisions of the Motor Vehicles Act, 1988, which is of statutory character. In short, the "benefits" agreed between the parties under contract is not akin to that of the statutory liability and payments of compensation contemplated under the provisions of the Motor Vehicles Act, 1988. Thus, the Tribunal had committed an error in not adjudicating the preliminary issue of maintainability and proceeded on the basis that there is a policy coverage and accordingly granted a sum of Rs.2 lakhs under the Personal Accident Cover.

13. Even for grant of Personal Accident Cover, the terms and conditions stipulated in the policy is to be verified. However, the Tribunal has proceeded and fixed the liability based on the statutory provisions and granted. In other words, the statutory coverage as well as the Personal Accident Cover has been withheld by the Tribunal, which is improper. Those two policies cannot be fixed. The Personal Accident Cover is a separate policy and the terms and conditions for the same are provided separately, which were agreed between the parties. Therefore, in the absence of any statutory liability under the policy, the Tribunal ought not to have entertained the claim petition filed under Section 166 of the Motor Vehicles Act.

14. The issue regarding the maintainability of the claim petition filed by the owner of the vehicle, more specifically, under the Personal Accident coverage, this Court had elaborately discussed the scope in the case of M/s.The Cholamandalam MS General Insurance Company Limited vs. Ramesh Babu [Judgment pronounced in CMA No.2434 of 2019 on 02.09.2020], wherein in paragraphs 13, 14, 35, 36 and 37, this Court observed as under:-

> "13. The learned counsel for the appellant solicited the attention of this Court with reference to the judgment rendered in the case of Royal Sundaram Allianz Insurance Company Limited Vs. Somu dated 04.03.2020, reported in 2020 (1)

TNMAC Page.547, wherein it was held that the policy of Insurance being contractual, the claimant entitled to claim compensation only with reference to the terms and conditions of the policy and not beyond that. Disability suffered not covered under the table given, in Section IV Personal Accident Cover for Owner-Driver, in the conditions of the policy of insurance. Accordingly, the award of the Tribunal was quashed in Paragraph 13 of the above judgment.

14. In yet another judgment in the case of Branch Manager, Oriental Insurance Company Limited Vs. Poongavanam, dated 12.03.2020, reported in 2020(1) TNMAC Page.600, wherein it is held that when a claim is made in terms of Contractual liability (other than Statutory liability), the Policy Holder/ Beneficiary has to approach the concerned Forum. Motor Accidents Claims Tribunal entertaining claims made under Personal Accident Coverage (being a contractual liability) was held erroneous. In paragraph 8 & 9 of the judgment has held as stated above. The respondent being the owner of Tata Indica Tourist Taxi bearing Registration No.TN-32- L-8595, is not entitled to any claim for compensation, Since there is no statutory cover envisaged for the owner under Section 147(1) of the Motor Vehicles Act. For these reasons, the appellant is of the opinion that the judgment and decree of the Tribunal is liable to be set aside.

35. The Motor Vehicles Act being a Special legislation and the Motor Accident Claims Tribunal is constituted to deal with the Accident Claims specifically and under the provisions of the Motor Vehicles Act, the Tribunal have no jurisdiction to deal with all other policies issued by the Insurance company, which all are contractual in nature and the terms and conditions agreed between the parties specifically. Such contracted policy cannot raise any right to the parties to file Claim Petition under the Motor Vehicles Act and such claims are to be

made before the competent Forum namely before Consumer Forum or before the competent Civil Court of Law. The enforceability of the terms and conditions cannot be adjudicated as such contractual policies are unconnected with the scope of the provisions of the Motor Vehicles Act, more specifically, under Section 147 of the Motor Vehicles Act.

36. It is relevant to consider that the Motor Vehicle policies are issued by the Insurance company for the purpose of grant of compensation and the language employed is "Compensation". However, the Personal Accident Coverage Policy reveals that it is "benefit" is to be granted. Thus, the word "Compensation" adopted under the Motor Vehicle Policy cannot be equated with the "benefit" to be granted under the Personal Accident Policy, which is independent and unconnected with the provisions of the Motor Vehicles Act as well as the compensation to be assessed and granted under the Motor Vehicles Act. There is a difference between the Motor Vehicle Policy and Personal Accident Coverage Policy. Motor Accident Policies are strictly within the ambit of the provisions of the Motor Vehicles Act. The Personal Accident Coverage Policy is strictly in accordance with the terms and conditions agreed between the parties. The contractual liability or obligations cannot be adjudicated by the Motor Accident Claims Tribunal under the provisions of the Motor Vehicles Act and in such an event, the Motor Accident Claims Tribunal are usurping the powers of the competent Civil Court, which is impermissible. If such contractual liabilities are adjudicated before the Motor Accident Claims Tribunal, then the Tribunal are exercising excess jurisdiction, which is not contemplated nor conferred under the provisions of the Motor Vehicles Act.

37. This being the distinct factors, which are to be ascertained with reference to the nature of Insurance Policy, all the Tribunals are bound to look into the

nature of the Policy at the first instance, before entertaining the Claim Petition. The Litigants should not be unnecessarily driven to various Courts by waiting for a long period before the Accident Claims Tribunal. Whenever a Claim Petition is filed, either under Section 166 or under Section 163-A of the Act or otherwise, the entertainability as well as the maintainability of the Claim Petitions are to be verified with reference to the nature of the policies issued by the Insurance Company. Contrarily, the Tribunal cannot adjudicate the terms and conditions agreed between the parties in a contract and grant compensation by invoking the provisions under the Motor Vehicles Act."

15. In view of the legal principles settled by this Court, in the judgment cited supra, and the said legal principles squarely applies to the facts and circumstances of the present case on hand, this Court has no hesitation in arriving a conclusion that the award of the Tribunal is perverse.

16. Accordingly, the judgment and decree dated 25.07.2019 passed in M.C.O.P. No.537 of 2017 by the learned Special Sub Judge, Special Sub Court-cum-Motor Accidents Claims Tribunal, Krishnagiri stands set aside and consequently, CMA No.4862 of 2019 is allowed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-V)

//True copy//

Sub Assistant Registrar

Svn

To

1. The Special Sub Judge,
Special Sub Court-cum-
Motor Accidents Claims Tribunal,
Krishnagiri.

2. The Section Officer,
   VR Section, High Court,
   Madras. +2 Copies

CMA No.4862 of 2019

GP(CO)
GMY(28/04/2021)