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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.12.2020

CORAM

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

C.M.A.NO.721 OF 2017

The Branch Manager,
ICICI Lombard General Insurance Company Limited,
No.140, 2 and 3rd floor,
Nungambakkam High Road,
Nungambakkam,
Chennai.

... Appellant/Respondent

Versus

M.Panneerselvam

... Respondent/Claimant

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, praying to set aside the award passed in M.C.O.P.No.29 of 2012, dated 07.09.2016, on the file of the Motor Accident Claims Tribunal cum Chief Judicial Magistrate, Thiruvannamalai and allow this above appeal.

For Appellant : Mr.Elamurugan
for M/s.K.K.Ramakrishnan

For Respondent : Ms.A.Subadhra

JUDGMENT

This appeal is preferred by the Insurance Company as against the award of Tribunal fixing compensation to the injured claimant to the tune of Rs.9,44,300/-. It is admitted even in the claim petition that the respondent/claimant is the owner cum occupier of the car insured with the appellant.

2. It is admitted in the claim petition that the accident was caused due to the rash and negligent driving of the driver of the vehicle owned by the claimant. The Tribunal also concluded that the accident was caused due to the rash and negligent driving of the claimant's driver. It is stated that the Car dashed on the diversion culvert and that the respondent who is the owner of the vehicle suffered serious injury. The



Tribunal awarded a sum of Rs.9,44,300/-. A sum of Rs.7,76,300/- is awarded towards medical and treatment expenses for the respondent.

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3. Aggrieved by the quantum and liability, the Insurance Company, with whom the vehicle was insured has preferred the above appeal.

4. The learned counsel appearing for the appellant contended that the claimant has taken a policy for which he has paid only a premium of Rs.100/- towards personal accident cover. Since the liability in the case of injury as per contract of Insurance is restricted upto a sum of Rs.2,00,000/, it is contended that the liability of appellant cannot exceed Rs.2,00,000/-..

5. The learned counsel appearing for the Insurance Company further submitted that the Tribunal has committed not only the jurisdictional error but also failed to consider policy which was marked as Ex.R1. Since the liability of the Insurance Company is limited to Rs.2,00,000/-, as per the policy marked as Ex.R1, the counsel further submitted that the award of Tribunal is against settled principles.

6. It is contended by the learned counsel appearing for the appellant that the Tribunal ought to have followed the judgment in Royal Sundaram case reported in 2021 TNMAC page 542. The learned counsel also referred to few other judgments, which are in line with the judgment above referred to.

7. The learned counsel appearing for the respondent does not dispute the policy terms and the fact that the liability is limited up to Rs.2,00,000/- towards personal accident cover. Since owner of the car himself met with the accident and sustained injuries, it is submitted that the claim petition under Section 166 of the Motor Vehicle Act, is not maintainable and that the liability is limited up to Rs.2,00,000/- as per the terms of the policy. Since the facts are not in dispute, this Court is of the view that the judgment of lower Court is contrary to several precedents particularly the judgment of this Court refund to earlier, where the liability of Insurance Company is held to be limited to the amount covered under the personal accident cover policy.



8. As a result, the judgment and decree of the Motor Accident Claims Tribunal namely, Chief Judicial Magistrate, Thiruvannamalai, in M.C.O.P.No.29 of 2012, dated 07.09.2016 is set aside. However, the claimant/respondent is entitled to a sum of Rs.2,00,000/- with interest at the rate of 7.5% from the date of petition. Accordingly, the award is modified to the extent indicated above. No costs.

Sd/-
Deputy Registrar(C.S)

//True Copy//

Sub Assistant Registrar

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To

The Motor Accident Claims Tribunal,
Chief Judicial Magistrate, Thiruvannamalai.

Copy To

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

+1cc to M/s.M.Malar, Advocate, S.R.No.40780

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BS(CO)
CS/07/09/2021