IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 10.12.2021
CORAM:

THE HONOURABLE MRS.JUSTICE S.KANNAMMAL

C.M.A.No.1714 of 2018
and
C.M.P.No.13281 of 2018
[video conferencing]

National Insurance Company Limited,
Represented by its Branch Manager,
Office at No.3, Middleton Street,
Calcutta State. ...Appellant/Respondent

Vs.

V.S.Sriram ...Respondent/Petitioner

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 22.06.2017 in M.A.T.C.O.P.No.222 of 2013, on the file of the Motor Accidents Claims Tribunal and Additional Subordinate Court, Mayiladuthurai.

For Appellant : Mrs.N.B.Surekha
For Respondent : Mr.T.Gobinath

JUDGMENT

This Civil Miscellaneous Appeal has been filed, challenging the award passed in M.A.T.C.O.P.No.222 of 2013, dated 22.06.2017, on the file of the Motor Accidents Claims Tribunal, Additional Subordinate Court, Mayiladuthurai.

2.The respondent is the claimant in M.A.T.C.O.P.No.222 of 2013, on the file of the Motor Accidents Claims Tribunal, Additional Subordinate Court, Mayiladuthurai. He filed the above said claim petition, claiming a sum of Rs.5,00,000/- as compensation for the injuries sustained by him in the accident that took place on 11.12.2011.

3.Heard the learned counsel appearing for the appellant and the respondent and perused the entire materials placed on record.

4.The learned counsel for the appellant would submit that the petition in M.C.O.P.No.222 of 2013 is not maintainable and there is no merit or bonafides in the petition. It is further submitted that the appellant / Insurance Company shall indemnify third parties only on behalf of the injured and shall not pay compensation to the insured himself, for which, there is no contract. It is also submitted that the respondent herein is the owner cum injured himself is not entitled to claim any compensation from the appellant / Insurance Company and is also not liable to pay compensation to the petitioner. It is submitted that no specific premium has been paid by the injured for the lost or damage to the injured or owner himself and more particularly, he had paid premium for Personal Accident Coverage Premium. It is also submitted that the injured cum owner ought to have filed the petition only against tort - feasor, the owner of the Jeep.

5.The learned counsel for the appellant / Insurance Company would further submit that the insured vehicle was not at all involved in the said accident and the police registered the case on wrong information. The Trial Court without considering all the above facts fixed the liability on the appellant and directed the appellant / Insurance Company to pay a sum of Rs.1,00,000/- along with 7.5% interest from the date of petition till the date of deposit to the claimant only by relying upon the premium of Rs.50/- collected for Personal Accident Coverage to the owner cum driver for a sum of Rs.1,00,000/-.

6.The learned counsel for the appellant / Insurance Company further submitted that the Tribunal has failed to see that the said amount payable by the insurer is only for the death caused to the owner while he is in driving by the said vehicle at the time of accident. The learned counsel for the appellant would also submit that as per the Insurance Policy, the owner cum driver injured can entitle 50% of the sum assured only if he had sustained schedule injury or total permanent disability and that the injuries sustained by the claimant herein would not come under either schedule injury or 100% total permanent disablement and the injured is not entitled to any compensation.

7.The learned counsel for the appellant also relied on the following ruling of this Court in C.M.A.No.2784 of 2017 dated 25.03.2021, and also relied on the Judgment reported in 2008 (5) SCC 736 [Oriental Insurance Co., Ltd., vs. Rajkumar Tavnu Ammanavar] and 2009 (2) SCC 417 [Oriental Insurance Co., Ltd., vs. Rajni Devi and Others].

8.The learned counsel for the respondent / claimant objected to the arguments putforth by the learned counsel for the appellant / Insurance Company and submitted that the Trial Court has rightly considered the facts of the case and awarded a sum of Rs.1,00,000/- as compensation to the claimant and no interference is called for in the award passed by the Tribunal.

9.Admittedly, the respondent / claimant is the owner cum driver of the vehicle and sustained injury in the said accident. The respondent / claimant has not sustained any schedule injury or sustained total permanent disability. On perusal of the Insurance Policy, a sum is assured for Personal Accident Coverage only. Hence, the submissions made on the side of the appellant / Insurance Company shall not be ignored or rejected and in view of the ruling cited supra also the respondent / claimant is not entitled to any compensation.

> “Section 163-A read thus:-
>
> 163-A. Special provisions as to payment of compensation on sturctured formula basis (1) Notwithstanding anything contained in this Act or in any other law for the time being in force or instrument having the force of law, the owner of the Motor vehicle of the authorised insurer shall be liable to pay in the case of death or permanent disablement due to accident arising out of the use of motor vehicle, compensation, as indicated in the Second Schedule, to the legal heirs or the victim, as the case may be.
>
> Explanation:- For the purpose of this Sub Section, “Permanent disability” shall have the same meaning and extent as in the Workmen's Compensation Act, 1923 (8 of 1923).
>
> (2)In any claim for compensation under Sub-Section (1), the claimant shall not be required to plead or establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act or neglect or default of the owner of the vehicle or vehicles concerned or of any other person.
>
> (3)The Central Government may, keeping in view the cost of living by notification in the Official Gazette, from time to time amend the Second Schedule”.

The said provision cannot be said to have any application in regard to an accident wherein the owner of the motor vehicle himself is involved. The question is no longer res integra.

9.Since, the respondent injured himself is insured and the premium paid is for Personal Accident Coverage and for the reasons stated supra the respondent is not entitled for any compensation.

10.In the result, the Civil Miscellaneous petition is allowed and the erroneous award passed by the Tribunal in M.A.T.C.O.P.No.222 of 2013, dated 22.06.2017, on the file of the Motor Accidents Claims Tribunal, Additional Subordinate Court, Mayiladuthurai is hereby set aside. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

ssi
To:

1.The Additional Subordinate Judge
The Motor Accidents Claims Tribunal,
Additional Subordinate Court, Mayiladuthurai.

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

+1 CC to Mr.T.Gobinath, Advocate sr 66666
+1 CC to Mrs.N.B.Surekha, Advocate sr 65694.

C.M.A.No.1714 of 2018

BR(CO)
SP(25/02/2022)