IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 11.01.2021	Pronounced on : 20.01.2021

Coram:

THE HON'BLE DR. JUSTICE G.JAYACHANDRAN

C.M.A.No.14 of 2017

P.Marimuthu ..Appellant

/versus/

The New India Assurance Company Ltd.,
Opp. to Dharapuram New Bus Stand,
Dharapuram Town.

Presently at
M.L.Complex,
Church Road,
Dharapuram Town. ..Respondent

Prayer: Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988, against the decree and judgment dated 22.04.2016 made in M.C.O.P.No.459 of 2010 on the file of the Motor Accident Claims Tribunal, (Sub Judge), Dharapuram.

For Appellant :Mr.N.Ponraj

For Respondent :Mrs.R.Sreevidhya

J U D G M E N T
((The case has been heard through video conferencing)

Aggrieved by the dismissal of the claim petition, the appeal is filed by the accident victim.

2.The Appellant herein is employed as Assistant in Tamil Nadu State Transport Corporation. On 01.03.2006, at about 7.45 p.m while he was riding his TVS - 50 moped bearing registration No.TN-33-W-1748 near Dobi colony Dharapuram - Udumalpet road, he met with an accident when the cyclist negligently fell before him. The appellant sustained injury on his head, right shoulder and thumb. He was admitted at PSG Hospital, Coimbatore and immediately admitted at GH, Dharapuram, for 20 days treated as inpatient and thereafter, for 40 days as out patient. Seeking compensation of Rs.1,80,000/-. He has filed claim petition against his insurer of his moped owner under Section 166 (1) of Motor Vehicles Act.

3.The respondent/Insurance Company filed counter stating that the accident occurred due to rash and negligently driving of the claimant/insurer. The claimant had no valid driving license. The vehicle was insured for "liability only policy." The claim petition is filed while his earlier petition in M.C.O.P.No.746 of 2006 is pending, hence claim petition is not maintainable and liable to be dismissed.

4. Before the Tribunal, in support of the claimant, the claimant and Dr.Sekar were examined as P.W.1 and P.W.2. 13 Exhibits were marked as Ex.P.1 to Ex.P.13. In support of the respondent, Two witnesses and Two exhibits were marked.

5. The Tribunal, on considering the F.I.R, wherein, the criminal case has been registered against the claimant for rash and negligently driving held that the accident has occurred due to negligence of the claimant. Further, the Insurance policy is "liability only policy" to indemnify third party claim. Though, Rs.50/- has been collected as additional premium for P.A, since the claimant had not produced his driving license, he is not entitled for compensation as per terms of the contract. The insurer not indemnified, if the vehicle is used or driven otherwise than in accordance with the Schedule. Since the claimant himself is a tortfeasor and had no valid driving license at the time of accident, the Tribunal dismissed the claim petition filed under Section 166 of M.V. Act..

6. The Appeal is filed by the appellant on the ground that the Tribunal erred in dismissing the claim petition contrary to the judgment of this Court rendered in National Insurance Company Limited Vs. Krishnan and another reported in (2013) 6 MLJ 520. The Tribunal failed to note that the claimant has paid Rs.50/- as additional premium under P.A cover and therefore, the Tribunal is entitled for compensation as per the terms of contract and the dictum of the single Judge judgment in National Insurance Company Limited Vs. Krishnan and another reported in (2013) 6 MLJ 520.

7.The Learned Counsel for the respondent would submit that the Personal Accident cover for owner-cum-driver is applicable in case of schedule injury and if there is no violation of contract. The claimant, who is owner of the vehicle and the insurer had no valid driving license. The claimant negligently and recklessly dashed against the cyclist and sustained injury, which are not injury covered under the P.A cover of the Insurance policy. The judgment referred by the

Appellant passed by the Single Judge of this Court has been considered by the Division Bench and overruled in Deputy Manager, United India Insurance Company Limited -vs- R.Rekha and others reported in 2017 (5) LW 300.

8. Heard the Learned Counsel for the appellant and the Learned Counsel for the respondent.

9. The appellant/claimant is the owner of the vehicle bearing registration No.TN-33-W-1748. He has paid Rs.185/- as premium which includes Rs.50/- for P.A cover with Limited Liability to an extent of Rs.1,00,000/-. In the said accident, the claimant has sustained the following injuries.

(i). Abrasion over right forehead and cheek.

(ii). 4 x 3cm size abrasion over the right shoulder.

(iii). Lacerated wound over the left thumb – 3 x 2cm.

(iv). Abrasion over both knees.

(v). Fracture proximal phalanx of left thumb.

(vi). Haemorrhagic contusion in left temporal and parietal region, fracture of lateral wall of right maxillary sinus and right zygomatic arch.

10. The claimant was treated conservatively for head injury, surgical correction was done for left thumb fracture by Ortho team and facial bone correction done by Plastic surgeon. The injury has not caused any disability in the earning capacity or physical comfort. The F.I.R given by the cyclist against the claimant and the sketch indicates that the claimant hit the cyclist while the cyclist was riding on the left road margin. It is settled principle of law that the liability of the insurer to indemnify the claimant shall be in accordance with the terms of contract. As far as the present case is concerned, the 1st principle under the contract is that there must not be any violation of law particularly the insurer will be entitled to claim compensation under P.A cover only if he holds an effective driving licence at the time of accident. While the terms of contract in unambitious terms has stated that the possession of valid driving license is a must to claim compensation In this case, the claimant has failed to produced the driving licence. In spite of the counter filed by the Insurance Company stating that the claimant had no valid driving licence at the time of accident.

11. Therefore, in view of grave violation of the Motor Vehicle Act and the terms of policy condition, the appellant is not entitled for any compensation, though, he has paid Rs.50/- as additional premium under P.A cover. Hence, this Court finds no error in the order of the Tribunal in dismissing the claim petition. Accordingly, the Civil Miscellaneous Appeal is dismissed. No costs.

s/d-
Assistant Registrar(CS-VII)

True Copy

Sub-Assistant Registrar

bsm
To
1.The Motor Accident Claims Tribunal, (Sub Judge), Dharapuram.

2.The Section Officer, V.R.Section, High Court, Madras.

C.M.A.No.14 of 2017

SRA(CO)
SP(08/09/2021)