

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 07.01.2021	Pronounced on :19.01.2021
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Coram:

THE HON'BLE DR. JUSTICE G.JAYACHANDRAN

C.M.A.No.85 of 2017

M/s Bajaj Allianz
Insurance Company Limited,
Divisional Office at
No.1/82, Nanjammas Complex,
Mettupalayam Road,
Thudiyalur,
Coimbatore District.

.. Appellant/Respondent

/versus/

Balaji

.. Respondent/Claimant

Prayer: Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988, against the decree and judgment dated 13th October, 2015, passed in M.C.O.P.No.891 of 2009 by the Motor Accident Claims Tribunal (II Additional District Court), at Salem.

For Appellant :Mr.J.Michael Visuvasam

For Respondent :Ms.J.Prithivi

J U D G M E N T

((The case has been heard through video conferencing))

The appeal is filed by the Insurance Company being aggrieved by the liability fixed on the Insurance company by the Motor Accident Claims Tribunal.

2. On 26.11.2008, when the claimant Balaji was travelling with goods in his van bearing registration No.TN-30-E-6257, the driver of the van drove the van with rash and negligent manner and the van was capsized. In the accident, the claimant Balaji sustained fracture in his right leg, right side feet, left shoulder, deep cut injury and abrasion over left leg and both hands. He was admitted in the hospital as inpatient and continuing his treatment for the injury. Hence, he has filed claim petition seeking Rs.5,00,000/- as compensation.

3.The Insurance Company contested the claim petition on the ground that the claimant is the owner of the van, which was capsized. The van has been insured under the Bajaj Alliance Insurance Company. As per the terms and conditions of the Insurance policy, the owner of the vehicle is not entitled to pay any compensation, except under personal liability coverage. Since the Personal Accident cover is only for specified injuries mentioned in the policy. Since the injuries sustained by the claimant does not fall under the categories of injuries specified, the claimant is not entitled for any compensation for the nature of the injury he sustained.

4.The claimant is not a third party. The claim petition under Section 166 of Motor Vehicles Act is not maintainable. In addition to the above defence, it was also contended that the van driver Balaji had no valid driving license. The claimant as owner of the vehicle failed to furnish details of his policy viz., date, time, place of accident and particulars of the injury as mandated under Section 134 C of M.V. Act.

5.Before the Tribunal, the claimant examined himself as P.W.1 and the Doctor, who has given disability certificate, was examined as P.W.2. 11 Exhibits were marked on behalf of the claimant. The Insurance Company examined one Mr.S.Hariharan, Law Officer and one Exhibit was marked.

6.On considering the evidence, the Tribunal has fixed 45% disability for the injury sustained by the claimant in the accident and taking note of the medical bills furnished to tune of Rs.2,03,700/-, for loss of income, pain and suffering, nourishment and transport, totally a sum of Rs.3,39,700/- was awarded. The said award is challenged in the present appeal.

7.The Learned Counsel appearing for the appellant submitted that the Insurance Coverage is for third party risk. Though premium of Rs.100/- was collected for the personal accident cover with restricted limited liability up to Rs.2,00,000/-, the injury sustained should fall under any one of the category specified under the terms and conditions of the insurance contract. The Tribunal has erred by awarding a sum of Rs.3,39,700/- as if, the claimant is a third party. The owner of the vehicle the insured, is the party to the contract and bound by terms of contract.

8.The Learned Counsel for the appellant relying upon the terms and conditions found in the Insurance Policy regarding Personal Accident Cover for owner-cum-driver submitted that the nature of injury listed in the terms and conditions alone is covered under the policy. The injury sustained by the claimant does not fall under the injury mentioned in the policy. Therefore, he is not entitled for any compensation.

9.To buttress his submission, the Learned Counsel relying upon the following three judgment of this Court in C.M.A.No.2434 of 2019 dated 02.09.2020 - M/s.Cholamandalam MS General Insurance Co. Ltd. -Vs- Ramesh Babu, C.M.A.No.1071 of 2016 dated 12.03.2020 - The Branch Manager, Oriental Insurance Company Limited -Vs- Poongavanam and C.M.A.No.448 of 2016 dated 04.03.2020 - Royal sundaram Allianz Insurance Company Limited -Vs- Somu.

10.Per contra, the Learned Counsel for the respondent/claimant submitted that the Insurance Company has collected additional premium of Rs.100/- for P.A cover. Having collected the premium, they cannot wriggle out from the liability. The liability of the Insurance Company to pay the owner of the vehicle under the P.A coverage considered by this Court in National Insurance Company Vs. Krishnan and another reported in 2013 (6) MLJ 520 and has held that the Insurance Company is liable to pay just compensation to the owner of the vehicle, since he is protected under the P.A coverage. Even restricted the compensation to the extent of limited liability, was held to be contrary to the spirit of the act and held it will defeat the very intention of the legislature and contrary to the judgment of the Hon'ble Supreme Court.

11.The Learned Counsel for the appellant in response to the above submission rebutted that the Single Judge judgment in Krishnan case is no more binding in view of the Division Bench judgment of this Court in Deputy Manager, United India Insurance Company Limited -vs- R.Rekha and others reported in 2017 (5) LW 300. Further, in the Hon'ble Supreme Court in National Insurance Vs. Ashalatha and other has considered the above issue and has held that the liability of the Insurance Company in case of P.A cover of the owner of the insured vehicle is to indemnify the extend limited as per the terms of Contract of insurance.

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

13.The claimant is the owner of the vehicle viz., Bajaj delivery van tempo bearing registration No.TN-30-6257with seating capacity of two persons. It is three wheeler public carrier. The vehicle has been insured under the appellant. A sum of Rs.3,678/- has been collected from the vehicle owner which includes Rs.1619.13 for own damage. Rs.1530/- for third party liability and Rs.100/- for P.A cover for owner-cum-driver for limited liability upto Rs.2,00,000/-. The insurance for the vehicle covered the period from 04.02.2008 to 03.02.2009 (midnight). Along with the Insurance Policy, the standard form for commercial vehicle package policy is annexed. Under Section IV of the Form, the terms for P.A cover for owner-cum-driver is

mentioned. The said Section reads as below:-

"SECTION IV- PERSONAL ACCIDENT COVER FOR OWNER-DRIVER

Subject otherwise to the terms and exceptions conditions and limitations of this policy, the Company undertakes to pay compensation as per the following scale for bodily injury/death sustained by the owner-driver of the vehicle in direct connection with the vehicle insured or whilst mounting into/dismounting from or traveling in the insured vehicle as a co-driver, caused by violent accidental external and visible means which independent of any other cause shall within six calendar months of such injury result in:

Nature of injury

Scale of compensation

(i) Death

100%

(ii) Loss of two limbs or sight of two eye or one limb and sight or one eye

100%

(iii) Loss of one limb or sight of one eye

50%

(iv) Permanent total disablement from injuries other than named above provided always that

100%"

14. The proviso to this clause enumerated three circumstances under which the Insurance Company will not be liable to pay the injured. The contention of the Learned Counsel for the Insurance Company is that they are not liable to pay the injured, since the nature of injury sustained by the claimant does not fall under any of the four categories, itself is factually not correct. The nature of injury and scale of compensation mentioned in the Section IV is illustrative in nature and not exhaustive. Further, in case of injuries, which are listed in serial Nos. 2 to 4, the injured motor accident victim will also incur medical expense and there is no exclusion of payment of medical expense under the contract. When there is no specific exclusion regarding reimbursement of medical expenses and having collected additional premium, the Insurance Company cannot escape from the liability. Having promised the insurer that he will be indemnified the loss incurred for the accident directly connected with a vehicle to the extent of liability limited under the contract, the Insurance Company cannot try to substitute a new term which is not found in the terms of the contract.

15. In this case, the claimant has paid additional premium of Rs.100/- for P.A. cover. He has produced Ex.B.3 series medical bills to show that he had incurred medical expense to

the tune of Rs.2,03,700/-. As per the terms of the policy, the insurer is entitled for compensation upto Rs.2,00,000/- under P.A. cover. The doctor, who has examined the injured, has given disability certificate is marked as Ex.P.10 indicating that the claimant has sustained 45% permanent disability. After collecting additional premium of Rs.100/-, the Insurance Company has contested the claim petition with all untenable plea such as the driver of the tempo van had no valid driving license, the accident did not occur in the manner stated in the claim petition, the claimant is not a third party, whereas the insurance coverage is only for third party and the claimant being the party to the contract he not covered under the policy, the expense and nature of disability not admitted so on and so forth.

16.The policy note proves that a sum of Rs.3,678/- including Personal accident cover limited to Rs.2,00,000/-, is collected by the Insurance Company. Therefore, it ought to have verified the medical bills and police records and paid the compensation as per the insurance coverage on its own. Unfortunately, in this case, they failed to do so. It is a clear case where the additional premium for P.A cover has been collected and there is no specific terms in the contract that medical bills are excluded. While so, the Insurance Company is liable to pay compensation to the claimant restricted to maximum of Rs.2,00,000/-.

17.The only error which this Court finds in the award of the Tribunal is that, it has awarded Rs.3,39,700/- which is over and above the liability admitted by the Insurance Company under the contract. Therefore, this Court partly-allows the Civil Miscellaneous Appeal restricting the compensation to Rs.2,00,000/- with 7.5% interest from the date of filing the petition till the date of realization.

18.Accordingly, the Civil Miscellaneous Appeal is partly-allowed. There shall be no order as to costs.

Sd/-
Assistant Registrar(CS-CCC)

//True copy//

Sub Assistant Registrar

bsm

To

The Motor Accident Claims Tribunal
(II Additional District Court), Salem.

Copy To

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

+1cc to Mr.J.Michael Visuvasam, Advocate SR.No.2052

+1cc to Mr.Kaithamalai Kumaran, Advocate SR.No.2839

C.M.A.No.85 of 2017

SSI (CO)
GMY (26/04/2021)