



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.11.2021

CORAM :

THE HONOURABLE MRS.JUSTICE S.ANANTHI

C.M.A.(MD)No.685 of 2020

WEB COPY

P.N.Arumugam

...Appellant/Petitioner

Vs.

The Branch Manager,
United India Insurance Company Ltd.,
54, Maidily Nivas, Palani Road,
Dindigul.

...Respondent/Respondent

PRAYER: Civil Miscellaneous Petition is filed under Section 173 of M.V.Act, 1988, to set aside the decree and judgment, dated 20.03.2020 made in M.C.O.P.No.779 of 2017 on the file of the Motor Accident Claims Tribunal (Special Subordinate Court), Dindigul.

For Appellant : Mr.S.Sankar
For Respondent : Mr.N.Dilipkumar

JUDGMENT

This Civil Miscellaneous Appeal has been filed to set aside the decree and judgment, dated 20.03.2020 made in M.C.O.P.No.779 of 2017 on the file of the Motor Accident Claims Tribunal (Special Subordinate Court), Dindigul on the ground that the claimant is a tort-feasor and hence he cannot claim for his own claim.

2.The case of the claimant before the Tribunal is that on 04.11.2014 at about 8.30 a.m. when the petitioner was proceeding in his Hero Honda two wheeler bearing Registration No.TN-57-AC-3066 on Dindigul to Karur National Highways from south to north and while he was proceedings near Vendasandur Bharani Mill, all of a sudden a dog crossed the road from east to west and due to the same he dashed against the dog and fell down. In the said accident, the petitioner sustained grievous injuries in all over the body. Immediately, he admitted in the JCB Hospital, Dindigul and there he was treated as in-patient from 04.11.2014 to 07.11.2014. On the basis of complaint given by the petitioner, a criminal case was registered in Cr.No.324 of 2014 by the Vendasandur Police Station. The accident was happened only due to the sudden crossing of a dog and the respondent is the insurer of the said motor-cycle is liable to pay compensation of Rs.1,00,000/- under Personal Accident Coverage and filed the claim for compensation in M.C.O.P.No.779 of 2017 on the file of the Motor



Accident Claims Tribunal/Principal District Court, Dindigul.

3.Before the Tribunal, on the side of the claimant, two witnesses were examined as P.W.1 and P.W.2 and nine documents were marked as Exs.P.1 to P.9. On the side of the respondent, one witness was examined as R.W1 and one document was marked as Ex.R1. On the side of witness, two documents were marked as Ex.X1 and Ex.X2.

4.The Tribunal, after considering the pleadings, oral and documentary evidences and the arguments of the counsel for the claimant and the respondents and also on appreciating the evidences on record, held that there is no reference that the petitioner has suffered permanent disablement. The disability suffered by the petitioner is partial permanent one and no permanent one and dismissed the petition. Against which, the appellant/claimant has filed this present appeal for seeking compensation.

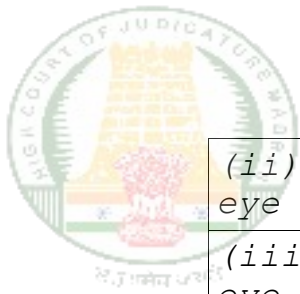
5.Heard Mr.S.Sankar, learned counsel appearing for the appellant and Mr.N.Dilipkumar, learned counsel appearing for the respondent and perused the Insurance Policy.

6.On perusal of records, it shows that the claimant has paid premium for personal accident coverage subject to maximum limit Rs.1,00,000/-. But even in the policy there is a condition they subject to IMT endorsement the policy can be valid. 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 violated accidental external and visible means which independent of any other cause shall within six calendar months of such injury result in:

<i>injury</i>	<i>Nature of</i>	<i>Scale of Compensation</i>
<i>(i) Death</i>		<i>100%</i>



(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%

7. According to the learned counsel for the respondent Insurance Company, the present case does not cover under the personal coverage policy condition. But the policy has not specifically contain the conditions in the IMT Act and also in this case, the claimant has suffered 10% permanent disability, which was not objected by the insurance company. Rs.1,00,000/- is subjected permanent total disablement for 100%. The claimant cannot suffer even paying the premium for personal coverage. The Act is beneficiary act. So this Court is inclined to fixed R.3,000/- for 1% disability and awarded Rs.30,000/-, as compensation for the claimant. Eventhough there is conditions to grant personal coverage for three categories, since the claimant suffered 10% of personal disablement, this Court awarded Rs.30,000/- as compensation.

8. In the result, this Civil Miscellaneous Appeal is partly allowed. No costs. The order, dated 20.03.2020 made in M.C.O.P.No.779 of 2017 passed by the Motor Accident Claims Tribunal (Special Subordinate Court), Dindigul is set aside. The appellant is entitled to get Rs.30,000/- (Rupees Thirty Thousand only) with interest at the rate of 7.5% p.a., from the date of claim petition till the date of realization. The respondent/United India Insurance Company limited, is directed to deposit the award amount, now fixed by this Court, within a period of four weeks from the date of receipt of a copy of this order. On such deposit, the appellant/claimant is entitled to withdraw the same, by filing necessary application before the Tribunal. No Costs.

Sd/-

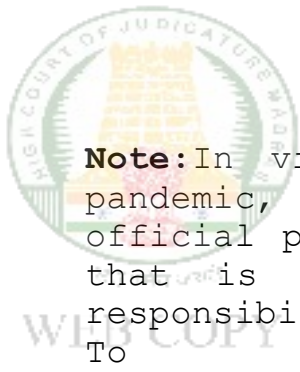
Assistant Registrar (CS III)

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Sub Assistant Registrar (CS)

vsd



Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.
To

The Motor Accident Claims Tribunal/
The Special Sub-ordinate Judge,
Dindigul.

Copy to

The Record Keeper,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.S. SANKAR, Advocate (SR-36157[F] dated 26/11/2021)
+1 CC to M/s.N.DILIPKUMAR, Advocate (SR-36352[F] dated 29/11/2021)

C.M.A. (MD) No. 685 of 2020
26.11.2021

NA (CO)
SB(24.01.2022) 4P 6C