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C.M.A.(MD)No.652 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 30.06.2021

Delivered On : 11.08.2021

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.M.A. (MD) No. 652 of 2018

R.K.Kalidasan

..Appellant/Petitioner

Vs.

IFFCO-Tokia General Insurance Ltd.,
Having office at
IFFCO Sadan C,
District Centre,
Saket,
New Delhi - 110017.

.. Respondent/Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to set aside the fair and decreetal order dated 01.03.2018 in M.C.O.P.No.82 of 2013 on the file of the Motor Accident Claims Tribunal/Additional Sub Court, Tenkasi.

For Appellant : Mr.F.X.Eugene
For Respondent : Mr.V.Sathivel

JUDGMENT

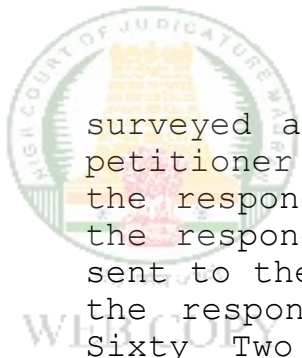
This Civil Miscellaneous Appeal has been filed against the award passed in M.C.O.P.No.82 of 2013 dated 01.03.2018, on the file of the Motor Accidents Claims Tribunal/Additional Sub Judge, Tenkasi.

2.The appellant herein is the claimant and the respondent herein is the respondent in the claim petition. The appellant has filed a claim petition in M.C.O.P.No.82 of 2013, claiming compensation for the damages caused to the petitioner's vehicle, in an accident that took place on 18.09.2011. The Tribunal has dismissed the appeal. Against which, the appellant has preferred this appeal.

3.A brief substance of the claim petition in M.C.O.P.No.82 of 2013 is as follows:

On 18.09.2011, the car of the petitioner Hyundai I20 bearing registration No.TN-7-J-8989 was involved in an accident and was damaged. The vehicle was insured with respondent. The vehicle was

<https://hcservices.ecourts.gov.in/hcservices/>



surveyed and the surveyor report was sent to the respondent. The petitioner approached the respondent with all the particulars. But the respondent failed to pay the compensation. Notice was sent to the respondent on 10.05.2012 and then on 15.05.2012, an email was sent to the respondent. The insurance policy is a package policy and the respondent is liable to pay Rs.6,62,872/- (Rupees Six Lakhs Sixty Two Thousand Eight Hundred and Seventy Two only) with interest.

4.A brief substance of the counter filed by the respondent therein is as follows:

This Court has no jurisdiction to enquire the case. The respondent is liable to pay compensation only to third parties. The petitioner is not a third party. The accident took place only due to the rash and negligent driving of the petitioner's driver. The report regarding the damages was received by the respondent. Since the petitioner failed to give consent letter, his claim petition was closed. The compensation claimed is excessive.

5.One witnesses was examined and 12 documents were marked, on the side of the petitioner. One witness was examined and one document was marked, on the side of the respondent. After trial, the Tribunal dismissed the petition. Against which, the appellant has preferred this Civil Miscellaneous Appeal.

6.On the side of the appellant, it is stated that the insurance company is liable to pay for the damages to the vehicle. The findings of the Tribunal regarding the jurisdiction is not correct. There is no necessity for the appellant to approach the consumer forum. The invoice given by the owner of the Motor Company Susee Hyundai was marked as Ex.A12. But even then, the respondent failed to pay the compensation and this fact was not considered by the Tribunal. In support of his contention, the judgment passed by this Court reported in **2017 5 CTC 1** is cited, wherein this Court has analyzed Section 167 of MV Act. The Tribunal failed to consider the same.

7.On the side of the respondent, it is stated that the facts of the case in the judgment cited above is not applicable to the present facts of the case. The claimant mentioned in the above judgment has initially filed a claim petition before the Employees Compensation Act and the same was dismissed and thereafter, a claim petition under the MV Act was filed and the Tribunal has directed the insurance company to pay the compensation. The present case is filed against the insurance company for the damages caused to the vehicle and the above cited judgment is not applicable to the present facts of the case.

8.On the side of the respondent, it is stated that the claim made by the owner of the vehicle against the insurer is not



maintainable, since he has not suffered any legal liability to be indemnified by the insurance company. In support of his contention, the judgment passed by this Court in the case of **the Oriental Insurance Company Limited, Tirunelveli v. Pandurendan (dead) and others** reported in (1997) AIR Madras 195 is cited.

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9. On the side of the appellant, it is stated that this judgment cited is not applicable to the present case and that the claim is for damages to the vehicle, for which premium has been paid.

10. The learned counsel for the respondent would rely upon the judgment of the High Court of Bombay in the case **Divisional Manager v. Subhash and others** reported in 2018 (1) TNMAC 208, wherein it is stated as follows:

"In view of the legal provisions discussed as above, the claim filed by respondent No.1 before the Motor Accident Claims Tribunal seeking compensation by way of damages caused to his own vehicle was not maintainable against the Appellate Insurance Company. The Tribunal has erred in allowing Claim petition against the Appellant-Insurance Company. The impugned Judgment to that extent therefore needs to be quashed and set aside and is accordingly set aside. Consequently, the Motor Accident Claim Petition No.269/1993 is dismissed against the Appellant-Insurance company."

11. The learned counsel for the respondent would rely upon the judgment of the High Court of Tripura in the case **United India Insurance Co. Ltd., v. Suman Kanti Saha and another** reported in 2016 ACJ 2566, wherein it is stated as follows:

"The last part of the opening portion of Section 165 makes it absolutely clear that other than death or bodily injury, the Claims Tribunal can entertain a claim petition only in respect of damage to any property of a third party. The owner of the vehicle can never be termed to be a third party. He is the insured and not the third party and the remedy for such a person is either to file a petition under the Consumer Protection Act or to file a civil suit. He cannot take recourse to the MV Act to get his claim. There is a plethora of judgments that when an owner of a vehicle suffers injuries in an accident, he cannot claim compensation. Therefore, I am of the considered view that the claim petition was not maintainable under the provisions of the MV Act."



12.The learned counsel for the respondent would rely upon the judgment of the High Court of Madhya Pradesh in the case **National Insurance Co. Ltd., v. Santosh Kumar** reported in (2001) ACJ 449, wherein it is stated as follows:

"From the aforesaid enunciation of law it becomes crystal clear that only a third party can maintain an application in respect of damages to the property before the Accidents Claims Tribunal. As far as the owner/insured is concerned, he cannot maintain an application in respect of claim of his own damages under Section 166 of the Act"

13.The learned counsel for the respondent would rely upon the judgment of the High Court of Chhattisgarh in the case of **Oriental Insurance Co. Ltd., v. Pooranlal and another** reported in 2007 ACJ 1804, wherein it is stated as follows:

"From the aforesaid enunciation of law it becomes crystal clear that only a third party can maintain an application in respect of damages to the property before the Accidents Claims Tribunal. As far as the owner/insured is concerned, he cannot maintain an application in respect of claim of his own damages under Section 166 of the Act

The learned Claims Tribunal has not decided the legal objections raised by the appellant in the impugned judgment and as such the award passed by the learned Tribunal is indefensible and is accordingly set aside and the appeal is allowed.

It is made clear that the respondent No.1/claimant shall be at liberty to initiate appropriate proceedings available under the law for recovery of the damages caused to his vehicle and the instant judgment shall not come in his way."

14.On the side of the respondent, it is stated that the vehicle dashed against a railway gate. The Insured cannot make a claim against the insurance Company for own vehicle damage. He can approach the Court only for damages to third parties. The appellant can approach only the consumer forum. In support of his contention, a judgment passed by this Court in the case of **the Oriental Insurance Company Limited, Tirunelveli v. Pandurendan (dead) and others** reported in (1999) 1 ACJ 327 is cited.

15.The learned counsel for the respondent would rely upon the judgment of this Court in the case of **M.Somasundaram v. Ramachandran Bricks and another** in C.M.A. (MD)No.1608 of 2006, wherein it is stated as follows:

"As such, the underlined words supra, would clearly demonstrate and indicate that the Tribunal



has got no jurisdiction to decide the dispute between the insurer and the insured relating to damage caused to insured's property. I am in respectful agreement with the earlier Division Bench decisions of this Court. Accordingly, the insured cannot claim compensation from his insurer and if at all, he is having any grievance, he is at liberty to approach the District forum concerned under the Consumer Protection Act or the civil Court."

16.It is seen that under Section 165 of MV Act, only a person having bodily injury or a person or a third party, who is affected by the death of person in an accident, whose vehicle was damaged can approach the Tribunal and that the vehicle owner cannot approach the Tribunal claiming compensation for damages to his own vehicle. But it is seen that the vehicle owner has filed a requisition before the respondent claiming damages. The reason for rejection of the claim petition filed by the claimant before the Insurance company was not clearly explained by the respondent herein.

17.In the above circumstances, the appellant is given liberty to approach the proper forum within a period of one month from the date of receipt of copy of this order. Since the proceedings was pending before the Tribunal and before this Court for a long time, the concern forum is directed to entertain the case without raising the question of limitation.

18.With the above direction, this petition is disposed of. No Costs.

Sd/-

Assistant Registrar (CO)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

MRN

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

1.The Motor Accidents Claims Tribunal,
Additional Sub Judge,
Tenkasi.

Copy to

The Section Officer, (2C)
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.F.X.EUGENE, Advocate (SR-25927[F] dated 11/08/2021)

+1 CC to M/s.V.SAKTHIVEL, Advocate (SR-26274[F] dated 13/08/2021)

C.M.A. (MD) No. 652 of 2018
11.08.2021

DJ(CO)
KB(13.09.2021) 6P 6C