IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 21.04.2022

PRONOUNCED ON : 09.06.2022

C O R A M :

The Hon'ble Mrs. Justice NISHA BANU

CMA.No.2696 of 2013
and M.P.No.1 of 2013

General Manager
The Oriental Insurance company Limited
Having their office at No.75
Krishnan Street, Tiruvannamalai Town
..Appellant/Respondent No.3

Vs

1.Shakila

2.Minor Suban

3.Minor Umar

4.Minor Samsath ..Respondents/Petitioners 1 to 4

5.Murugan ..Respondent/Respondent 1

6.Selvam ..Respondent/Respondent 2

PRAYER : CMA filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree passed in decree dated 13/8/2012 made in MCOP.NO.1159 of 2009 on the file of Motor Accident Claims Tribunal, (District court), Tiruvannamalai.

For Appellant : Mr.K.Vinod for
Mrs.Elveera Ravindran

For Respondents : Mr.Terry Chella Raja for
M/s.M.Malar R1 to R4
R5 : NA
R6 : Steps not having been taken to serve

JUDGMENT

The appellant/Insurance company has filed this appeal by raising the main ground that the Tribunal has no jurisdiction to deal with the Personal Accident Coverage Policy under Motor Vehicles Act.

2. The brief facts of the case is that the respondents 1 to 4 herein are the claimants who filed MCOP.No.1159 of 2009 claiming Rs.10,00,000/- for the death of 1st respondent's husband. On 15/10/2007 at about 3.00 p.m., while the deceased was riding the motor cycle bearing Reg.No.TN 25 J 6225 along the Sathanoor to Thandarampattu Salai, the rider of another motor cycle bearing Reg.No.TN 39 K 4635 rode his vehicle in a rash and negligent manner, came from the opposite direction and hit the deceased vehicle, resulting in the accident and Kathar Basha succumbed to the fatal injuries.

3. The appellant/Insurance company is the insurer of deceased's motor cycle bearing Reg.No.TN-250J-6225. The tribunal found that the accident occurred due to rash and negligent driving of the 1st respondent before the Tribunal (5th respondent herein) .The owner of the said vehicle is 2nd respondent before the tribunal (6th respondent herein).

4. The tribunal also found that the negligence is on the 5th respondent, but the offending vehicle driver does not possess valid licence and the offending vehicle was not insured. The vehicle which the deceased driven was insured with the appellant-insurance company. The legal heirs of the deceased filed the complaint against 5th and 6th respondent, who are the driver cum owner of the offending vehicle and also the insurance company who is the insurer of the deceased vehicle. The tribunal, pointed out that Ex.R.3 - Insurance Policy is a comprehensive Policy, including the personal accident claim and hence compensation of Rs.1,00,000/- has to be paid by the appellant/insurance company.

5. Aggrieved by the said finding of the tribunal, this appeal is filed by the appellant/insurance company contending that claimants cannot get compensation under Personal Accident Coverage before the Tribunal. It is further submitted that for getting benefit under personal accident coverage, the legal heirs of the deceased have to submit the claim form along with necessary documents.

6. It is also the contention of the appellant that the deceased was not having driving license to drive any vehicle at the time of accident, therefore, even under personal accident coverage, the claimants are not entitled for any benefit.

7. The other contention of the learned counsel for the appellant is that the rider and owner of the offending vehicle are the tortfeasor and the award of the tribunal exonerating them from liability has no justification.

8. In support of his submissions, the learned counsel for the appellant relied on the decision reported in 2021 ACJ

979 [Cholamandalam MS General Ins Co. Vs. Ramesh Babu] wherein, the Honourable Supreme court held that the tribunals have no jurisdiction to deal with other policies issued by the insurance company, which are contractual in nature and the terms and conditions agreed between the parties specifically. Such contracted policy cannot raise any right to the parties to file claim petition under the Motor Vehicles Act and such claims are made before the competent forum, namely, before Consumer forum or before the competent civil court of law. It is further held by the Supreme court that the contractual policies are unconnected with the scope of the provisions of the Motor Vehicles Act, more specifically under Section 147 of the Motor Vehicles Act.

9. Per contra, the learned counsel for respondents 1 to 4 submitted that when additional premium is paid for covering personal accident of owner-cum-driver, then the Insurance Company is liable to pay compensation. The learned counsel relied on the decision reported in 2020 (1) TNMAC 1 (SC) [Ramkhiladi and another Vs. United India Insurance Co.Ltd., and another] and submitted that, as per contract of insurance in case of personal accident, owner/driver is entitled to sum of Rs.1 lakh and insurer is liable to pay the same.

10. To answer the issue on hand, it is necessary to look into the decision rendered by this court reported in 2020 (1) TNMAC 600 [Branch Manager, Oriental Insurance Co. Ltd., Tiruvannamalai, Vs. Poongavanam and others], wherein in paragraph 8, it is observed as under:-

> "It is relevant to consider that the Motor Vehicles policies are issued by the Insurance companies for the purpose of grant of compensation i.e., the language employed is "compensation". However, in the personal accident policy, it is clearly stated that the "benefit" is to be granted. Thus, the word compensation adopted under the Motor Vehicle Policies cannot be equated with the "benefits" to be granted under the personal accidents policy, which is independent and unconnected with the provisions of the Motor Vehicles Act as well as the compensation to be granted under the Motor Vehicles Act. This being the basic difference in respect of the personal accident policy, the Tribunal cannot have any jurisdiction, so as to adjudicate the issues with reference to such stand alone policies and if such a power is granted, then the scope of the powers conferred under the Tribunal is exceeded and therefore, this Court is of the considered opinion that the Tribunal has erroneously exercised its jurisdiction, so as to grant the benefit under the personal accident policy. "

11. 11. Admittedly, the policy is a contractual policy and the claimants are entitled to approach the appellant/respondent herein. The compensation which the claimants are entitled is under the Comprehensive Policy which includes the personal accident policy. Though the petitioner has approached the wrong forum, the matter has been adjudicated and the only finding given by the Tribunal is that the petitioners are entitled for Rs.1,00,000/- under the Personal Accident Policy and the same is granted as compensation.

12. The MCOP is of the year 2009 and CMA is of the year 2013. In the case on hand, the respondents 1 to 4 have lost their beloved and the sole bread winner of the family. The claimants were awarded only Rs.1 lakh as compensation towards the Personal Accident Coverage Policy which is questioned by the Insurance Company on the point of jurisdiction. The claimants are not before this court questioning the findings of the Tribunal in respect of liability of compensation as against the offending vehicle. It is transpired that claimants are poor litigants i.e., the wife and minor children of the deceased. In such circumstances, the claimants need not be driven to once again undergo the litigation process for the claim of Rs.1,00,000/-. Since entire award amount has already been deposited by the appellant vide order of stay passed by this court dated 03.01.2014, under exceptional circumstances as pointed out by this court, the claimants are permitted to withdraw the same with interest and costs. CMA is dismissed. This judgment will not be cited as a precedent in any other matters. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

nvsri

To

1.The Motor Accidents claims Tribunal,
(District Judge), Tiruvannamalai.

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

+1cc to M/s.M.Malar, Advocate SR. No. 33834
+1cc to Mrs.Elveera Ravindran, Advocate SR. No. 33799

C.M.A.No.2696 of 2013

MG (CO)
PR (30/06/2022)