IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **22.11.2022**

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THE HONOURABLE MS. JUSTICE P.T.ASHA

CMA.No.3830 of 2019
and
C.M.P.No.21948 of 2019

Oriental Insurance Company Limited,
Giris Complex, 1st Agrahara Street,
Samraj Nagar, Karnataka State - 571313.
... Appellant/Respondent

Vs.

1.M.Kumar
... 1st Respondent / Petitioner

2.R.Arivazhagan ... 2nd Respondent / Respondent

PRAYER : Appeal filed under Section 173 of the Motor Vehicle Act , 1988 against the Judgment and Decree in MCOP No.533 of 2013, dated 20.10.2017 on the file of the Motor Accidents Claims Tribunal, Subordinate Court, Sathyamangalam.

For Petitioner : Mr.S.Senthil Kumar

For Respondents : Mr.M.Lokesh [R1]
: No appearance [R.2]

JUDGEMENT

The insurance company has preferred the above appeal primarily challenging their liability to compensate the claim petitioner. The facts in brief which is necessary for disposing of the above appeal is herein below stated and parties are referred to as the same ranking as before the Tribunal.

2. The petitioner had filed MCOP.No.533 of 2013 claiming compensation for the injuries sustained by him in a road accident. He had claimed a sum of Rs.2,00,000/- as compensation. It is his case that he had suffered grievous injuries on his head, chest and both the elbows as well as injuries all over his body. He claimed to be running a hotel business and was aged about 51 years. As per his version on 13.06.2013 at about 13.30 hours when he was riding his motor cycle bearing Registration No.TN 36 T 0923 on Thalavady to Mariyapuram road along with one Chennanjappa, riding pillion, the 1st respondent who was riding his motor cycle bearing Registration No.TN 28 AL 8667 coming in the opposite direction dashed against the petitioner's motorcycle on account of the rash and negligent driving at high speed. In the accident the pillion rider had died and the

petitioner had sustained grievous injuries all over his body.

3. The 1st respondent had remained ex parte and it was the 2nd respondent/insurance company which had contested the claim. In their counter the insurance company would submit that the police had registered the case only against the 1st respondent and therefore, prima facie the 2nd respondent who is the insurer of the petitioner's motorcycle was not a necessary party and cannot be called upon to compensate the petitioner.

4. The Tribunal below after considering the evidence on record came to the conclusion that it was the 1st respondent who was responsible for the accident and that there was no negligence on the part of the petitioner. Thereafter, awarded a compensation of a sum of Rs.1,09,927/-. Though the negligence was on the part of the 1st respondent, however, since the 1st respondent had taken a personal accident policy, the insurance company was mulcted with the liability to pay a sum of Rs.1,00,000/- which was the amount under the policy to which the Insurance Company was liable to compensate. The insurance company has challenged this award stating that

the personal accident cover would be applicable only if the policy holder had suffered injuries resulting in a permanent disability or in death. In the instant case, the petitioner has not sustained permanent disablement and therefore, the order passed by the Tribunal has to necessarily be set aside.

5. The learned counsel for the appellant/insurance company had relied upon the judgment of this Court reported in ***2020 (4) RCR(Civil) 247 - The Cholamandalam MS General Insurance Company Limited Vs. Ramesh Babu*** as also an unreported judgment of this Court in ***CMA.No.1428 of 2017 - The Divisional Manager, M/s.United India Insurance Co., Ltd, Vs. R.Rekha and others.***

6. Per contra, Mr.Lokesh learned counsel appearing on behalf of the respondent would place reliance upon the judgment reported in ***2013 (1) TN MAC 325 - Bajaj Allianz General Insurance Co. Ltd. Vs. C.Ramesh*** where the learned Judges had expounded as to why the benefits of a personal accident cover has to be extended to all kinds of injuries without restricting it to death and permanent disabilities. He would rely upon the Para.Nos.100 to 112 of the above said judgement. He would submit that this

judgment has been followed by a learned Single Judge in the following judgments reported in ***(1) 2018 SCC Online Mad 13152 - National Insurance Company Limited Vs. Velmurugan, (2) CDJ 2021 MHC 563 - he Divisional Manager, M/s. United India Insurance Co. Ltd, Vellore Vs. C.Kumar & Another, (3) CDJ 2020 MCH 4109 - K.Indudathi & Others Vs. M.Periyasamy & Another and (4) CDJ 2012 MCH 3122 - The New India Assurance Co. Ltd., Vs. M.Subramanian.***

7. Heard both the counsels.

8. It is not doubt true that the petitioner has not sustained grievous injuries which has resulted in a permanent disability. In the judgment reported in ***2013 (1) TN MAC 325 - Bajaj Allianz General Insurance Co. Ltd. Vs. C.Ramesh***, the learned Judge has at length considered the personal accident cover policy, the nature of injuries covered under this kind of a policy and ultimately had observed that the policy does not contain a negative covenant that compensation would not be paid in respect of other bodily injuries. The learned judge has relied upon the judgment in ***Rita Devi and Others Vs. New India Assurance Company Another - AIR 2000 SC***

1930 to draw strength from the judgment of the Hon'ble Supreme Court that the provisions of the Act while being construed should be construed in such a fashion that it should advance the beneficial purpose which is the underlying tenet of the Act. Ultimately, the learned Judge observed as follows :-

> *"112. In the light of the above decisions and discussion, this Court is of the view that the benefit under a Personal Accident Cover Policy, should be extended to all kinds of injuries and that depending upon the nature of injuries, disablement, expenditure incurred under various heads, the injured is entitled to make a claim for compensation. In the case of four kinds of injury, specified under the Policy, the scale of compensation is 100% or 50%, as the case may be, depending upon the nature of injuries, mentioned under Items 1 to 4. The contention that the Consumer Forum alone has the jurisdiction to entertain a claim under the Personal Accident Cover Policy, is contrary to the statute and the decision made in* ***Chairman, Thiruvallur Transport Corporation v. Consumer Protection Council,*** *1995 (2) SCC 479. "*

9. I am inclined to follow the dicta laid down in the above judgment and therefore, the contention of the insurance company relating to the liability has to be rejected. Admittedly, the injuries that the petitioner has sustained is simple in nature, he has been an impatient for 7 days and there is nothing to show that he has suffered a permanent disablement. Consequently, the amount granted under the head of attender charges is reduced from Rs.4,000/- to a sum of Rs.2,000/- and pain and suffering from Rs.25,000/- to Rs.15,000/-. In all other respects the award of the Tribunal remains un-altered. Therefore, the total compensation payable is reduced to a sum of Rs.97,927/-.

10. Therefore, the modified compensation would work out as follows;-

S.No	**Description**	**Amount awarded by Tribunal (Rs)**	**Amount awarded by this Court (Rs)**	**Award confirmed or enhanced or granted or reduced**
1.	Compensation for 3 injuries sustained by petitioner	25,000/-	25,000/-	Confirmed
2.	Loss of income due to petitioner undergoing treatment	6,500/-	6,500/-	Confirmed

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted or reduced
3.	Cost of treatment special meal	4,000/-	4,000/-	Confirmed
4.	Attender charges	4,000/-	2,000/-	Reduced
5.	Hospital Bills	6,445/-	6,445/-	Confirmed
6.	Medicine Bills	38,982/-	38,982/-	Confirmed
7.	For pain and sufferings	25,000/-	15,000/-	Reduced
	TOTAL	**1,09,927/- restricted to Rs.1,00,000/- as per the policy**	**97,927/-**	**Reduced by Rs.2073/-**

11. Therefore, the Civil Miscellaneous Appeal is partly allowed and the award of the Tribunal be and hereby is reduced to a sum of Rs.**97,927**/- from Rs.**1,00,000 /-** together with interest @ 7.5 % per annum from the date of petition till the date of deposit. In all other respects the award of the Tribunal is confirmed. The Insurance Company/appellant herein is directed to deposit the said amount (Rs.**97,927**/-) to the credit of MCOP.No.533 of 2013 on the file of the The Motor Accidents Claims Tribunal/ Subordinate Court, Sathyamangalam. together with interest @ 7.5% per annum from the date of claim petition till the date of deposit and costs as awarded by the Tribunal, less, the amount, if any already deposited, within a period of six

weeks from the date of receipt of a copy of this Judgement. On such deposit being made, the claimant/1st respondent herein is permitted to withdraw the award amount now determined by this Court along with interest and costs, after adjusting the amount if any already withdrawn. The Insurance Company is permitted to withdraw the excess amount lying in the deposit to the credit of MCOP.No.533 of 2013 on the file of the The Motor Accidents Claims Tribunal/ Subordinate Court, Sathyamangalam, if the entire award amount has already been deposited by them. No costs. Consequently, the connected Miscellaneous Petition is closed.

22.11.2022

Index : Yes/No
Internet: Yes/No
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To

1.The Motor Accidents Claims Tribunal/
Subordinate Court, Sathyamangalam.

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

P.T. ASHA, J,

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