BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 16.11.2022

Delivered On : 02.12.2022

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.M.A.(MD)No.53 of 2018

The Branch Manager,
United India Insurance Company Ltd.,
Ambasamudram. ... Appellant / Respondent

Vs.

Perumal ... Respondent / Petitioner

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree, dated 16.11.2016, made in M.C.O.P.No.376 of 2011, on the file of the Motor Accident Claims Tribunal – Additional Sub Court, Tenkasi.

For Appellant : Mr.A.S.Mathialagan

For Respondent : Mr.R.J.Karthick

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the award,dated 16.11.2016, made in M.C.O.P.No.376 of 2011, on the file of the Motor Accident Claims Tribunal–Additional Sub Court, Tenkasi. The appellant herein is the respondent, the respondent herein is the claimant in the original M.C.O.P. Petition.

2. A Brief substance of the claim petition, in M.C.O.P.No.376 of 2011, is as follows:

On 21.01.2011, at about 6.00 pm, when the petitioner was travelling in a two wheeler bearing Registration No.TN-76-J-0158 in a careful and cautious manner, an auto came in a rash and negligent manner and dashed against the petitioner from behind. The petitioner sustained injuries and there was fracture in the skull. He took first aid in Government Hospital, Tenkasi, then, he was taken to Tirunelveli Government Medical College Hospital and he took treatment as inpatient from 24.01.2011 till 31.01.2011. The rash and negligent driving of the auto driver was responsible for the accident, since the auto driver could not be identified and since the vehicle of the petitioner was having valid insurance policy, the petitioner has filed this petition claiming a compensation of Rs.5,00,000/-.

3. A brief substance of the counter filed by the respondent, in M.C.O.P.No. 376 of 2011, is as follows:-

The manner of the accident and injuries are all denied. The petitioner was not having valid driving licence. The petitioner violated the policy conditions. The petitioner has to prove his income. The respondent is not liable to pay compensation. The petition to be dismissed.

4. 2 witnesses were examined and 12 documents were marked on the side of the petitioner. 1 witness was examined and 3 documents were marked on the side of the respondent. After considering both sides, the Tribunal awarded a sum of Rs.81,000/- as compensation.

5. Against the award, the respondent / appellant has filed this appeal on the following grounds:-

The Tribunal failed to consider that the claimant himself was the injured and he cannot claim compensation from his own insurance company. The provision of law is wrong and is not maintainable. The case is a hit and run case. Liability cannot be fixed on the insurance company. In the F.I.R and in the charge sheet, it is clearly mentioned that some unknown auto caused the injuries. In Ex.P2-Accident Register, it is clearly mentioned that it was the claimant, who fell down from the two wheeler and he sustained injuries. Unless the injured was liable, the insurance company is not liable to pay compensation. The award is excessive.

6. On the side of the appellant, it is stated that the claimant is the owner of the two wheeler and he sustained injuries. The owner of the vehicle cannot claim any relief against his own insurance company. Even in the claim petition, it is

mentioned that the claimant was travelling in the two wheeler and he was hit by an unknown auto. In the accident register, it is clearly mentioned that it was the claimant, who himself fell down from the two wheeler and sustained injuries. The Tribunal is wrong in fixing the liability on the insurance company.

7. On the side of the appellant, a judgment of the Hon'ble Supreme Court reported in ***2013-1-TNAMC-781 (SC) (New India Assurance Co. Ltd., V. Prabha Devi and others***) is cited, wherein, it is stated as follows:-

> *"We have perused the judgment of this Court in the case of Dhanraj Supra. In that case, the appellant who was the insurer was travelling in the insured vehicle, which met with an accident. In the accident, the appellant as well as the other passengers received injuries. A number of claim petitions came to be filed. The appellant who was the insurer also filed a claim petition. The MACT held the driver of the Jeep responsible for the accident. In all the claim petitions filed by the other passengers, MACT directed that the appellant (the owner) as well as the driver and the Insurance Company were liable to pay compensation. Furthermore, in the claim petition filed by the appellant, the MACT directed the driver and the Insurance Company to pay compensation to the appellant. The aforesaid finding of the MACT was upheld by the High Court in the appeal filed by the Insurance Company. The Insurance Company was, in appeal before this Court challenging the judgment of the*

High Court awarding compensation to the owner of the insured vehicle. Taking into consideration the provision contained in Section 147 of the Act, this Court observed as follows :-

"8. Thus, an insurance policy covers the liability incurred by the insured in respect of death of or bodily injury to any person (including an owner of the goods or his authorised representative) carried in the vehicle or damage to any property of a third party caused by or arising out of the use of the vehicle. Section 147 does not require an insurance company to assume risk for death or bodily injury to the owner of the vehicle.

9.In the case of Oriental Insurance Co. Ltd. versus Sunita Rathi it has been held that the liability of an insurance company is only for the purpose of indemnifying the insured against liabilities incurred towards a third person or in respect of damages to property. Thus, where the insured i.e. an owner of the vehicle has no liability to a third party the insurance company has no liability also.

10.In this case, it has not been shown that the policy covered any risk for injury to the owner himself. We are unable to accept the contention that the premium of Rs.4989 paid under the heading "Own damage", the words "premium on vehicle and non-electrical accessories" appear. It is thus clear that this premium is towards damage to the vehicle and not for injury to the person of the owner. An owner of a vehicle can only claim provided a personal accident insurance has been taken out. In this case there is no such insurance." In view of the aforesaid ratio of law, the claim made by the respondents could not have been allowed. Consequently, Civil

Appeal No. 479 of 2007 is allowed. The impugned Award as well as the impugned judgment of the High Court are set aside."

8. On the side of the respondent-claimant, it is stated that premium was paid for own damages. In the counter filed by the claimant, no objection was raised by the appellant, regarding the eligibility of the owner to receive compensation. The policy is a comprehensive policy and the policy covers the owner cum driver.

9. On the side of the respondent-claimant, a judgment of this Court in C.M.A.(MD)No.1050 of 2012 (The United India Insurance Co.Ltd., V. Samuthirakani and others), dated 11.10.2022 is cited, wherein, it is stated as follows:-

> *"8.On the side of the respondents, it is stated that since the owner of the vehicle died in the accident, there is no question of impleading the owner in this case. The policy is a comprehensive policy. The appellant admits the liability of Rs.1,00,000/~. The award of compensation, fixed by the Tribunal is very low. Even in hit and run cases, the minimum award is Rs.5,00,000/-. "*

10. A perusal of the counter filed by the appellant before the Tribunal reveals that the appellant has not raised any issue regarding the liability towards the

owner of the vehicle. Only in the appeal, the appellant has raised this new point. A perusal of the policy-Ex.P4 reveals that the policy is a comprehensive policy and premium was paid for owner cum driver, after receiving Ex.P4-policy premium for the owner, the insurance company cannot claim that the owner is not entitled to claim insurance from his own insurance company. Hence, it is decided that the insurance company is liable to pay compensation to the claimant.

11. Accident Register copy was marked as Ex.P2. Discharge summary was marked as Ex.P6. Case history was marked as Ex.P7. Scan reports were marked as Ex.P8. Disability certificate was marked as Ex.P10. X-Ray was marked as Ex.P11. P.W.2 has deposed that the claimant was having 40% disability. The Tribunal fixed the disability as 25% and has awarded Rs.50,000/- for 25% disability, which is reasonable.

12. The Tribunal awarded Rs.10,000/- towards pain and sufferings, Rs.5,000/- towards loss of amenities, Rs.6,000/- towards loss of income, Rs.5,000/- towards transport expenses, Rs.5,000/- towards extra nourishment, which are all reasonable. The total award of Rs.81,000/- is also reasonable.

13. In the above circumstances, it is decided that there is nothing sufficient

enough to interfere in the orders of the Tribunal. Hence, this appeal is dismissed. No costs.

(i) The quantum of compensation awarded by the Tribunal is hereby confirmed.

(ii) The appellant - Insurance Company, is directed to deposit the entire compensation of **Rs.81,000/-** (if not already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and with costs, within a period of eight weeks from the date of receipt of a copy of this order.

(iii) On such deposit being made by the appellant / Insurance Company, the respondent herein / claimant is permitted to withdraw the award amount with interest and costs, on filing of proper petition before the Tribunal, less any amount, if already withdrawn by him. The claimant is not entitled for interest for the default period, if there is any.

02.12.2022

Index : Yes/No
Internet : Yes/No
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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 Additional Sub Court,
Motor Accident Claims Tribunal,
Tenkasi.

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

R. THARANI, J.

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Pre-delivery Judgment made in
C.M.A.(MD)No.53 of 2018

02.12.2022