0IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.04.2023

CORAM:

THE HONOURABLE MRS. JUSTICE N.MALA

C.M.A.No. 1535 of 2021
and
CMP.No. 8061 of 2021

The Branch Manager
The Oriental Insurance Company Limited
No.33-C/10, Lodge President Complex
Thanjavur Road
Thiruvarur District and Taluk. ... Appellant

Versus

Kalidass ....Respondent

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Award and Decree in MCOP.NO. 153 of 2016, dated 04.09.2019 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate Court, Nagapattinam.

For Appellant	:	Mr.N. Vijayaraghavan
For Respondent	:	No Appearance

JUDGMENT

This appeal is filed by the appellant/Insurance Company challenging the Award and Decree dated 04.09.2019 in MCOP.No. 153 of 2016 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate Court, Nagapattinam.

2. The appeal is filed challenging only the liability. The claimant who is the owner of the vehicle, has filed claim petition claiming a sum of Rs.10,00,000/- as compensation for the injuries sustained by him in the motor accident that had occurred on 25.08.2015.

3. The claimant while riding his two wheeler (Honda Shine) bearing Registration No. TN-50-M-6714 was hit by the rider of the two wheeler bearing Registration No. TN-50-L-4474 when he came in the opposite direction in a rash and negligent manner. Due to the impact of the accident, the claimant suffered grievous injuries. According to the Claimant, he was earning a sum of Rs.15,000/- per month and due to the injuries sustained by him in the accident, he was not able to earn as before.

4. The Claim Petition was resisted by the Insurance Company

by filing counter affidavit, in which a specific defence was taken that as the claimant the owner of the vehicle, involved in the accident, he could not maintain the claim petition before the Claims Tribunal. According to the Insurance Company, the liability to the claimant was contractual in nature and hence the claim petition was not maintainable before the Tribunal. The Insurance Company contended that remedy for the claimant lay before other fora and not before the Claims Tribunal. The Insurance Company further contended that as the liability arose out of a contract, the terms of the contract were to be strictly construed. The claimant has to approach and seek remedy only before the competent Civil Court. It was the further case of the Insurance Company that the claim was subject to the terms and conditions in the policy.

5. The Tribunal on an assessment of the pleadings and evidence on record held that the Insurance Company was liable to pay the compensation, as under the policy/Ex.P2, additional amount of Rs.50/- was paid and therefore, the Insurance Company was liable to pay the compensation under the Personal Accident Coverage for the Owner Cum Driver. The Tribunal awarded Rs.2,00,000/- as compensation for the

injuries sustained by the Claimant, which were assessed at 40% under the disability certificate. Aggrieved by the Award of the Claims Tribunal the Insurance Company has filed the above appeal.

6. According to the learned counsel for the appellant the injuries sustained by the Claimant, were not covered by the terms and conditions of the policy, which clearly stipulate the nature of injuries covered by the policy.

7. The learned counsel for the appellant/Insurance Company has relied upon the decision of this Court in the case of **The Cholamandalam MS General Insurance Company Limited** v. **Ramesh Babu,** in CMA.No. 2434 of 2019, dated 02.09.2020.

8. Heard the learned counsel for the appellant. There is no representation for the respondent.

9. The mere fact that the additional premium was paid, cannot

make the Insurance Company liable to pay the compensation if it is not covered under the terms and conditions of the policy. Whereas the liability to third parties is statutory liability, liability to the owner/driver is contractual in nature and therefore, the claim is based strictly on the terms and conditions stipulated in the policy.

10. The policy is marked as Ex.P2 and the terms and conditions of policy/Ex.R3 specified in Section III relating to the occurrence of the Accident, reads as follows:-

> "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 whilst mounting into / dismounting from or traveling in the insured vehicle as a co-driver, caused by violent accidental external visible means which independent of any other cause shall within six calender months of such injury result in."

The compensation under the Personal Accident Coverage is provided only in respect of the injuries specified in the Table, given in Schedule IV of the Personal Accident Coverage for OWNER-DRIVER, under the policy, as extracted hereunder:-

Sl.No.	*Nature of Injury*	*Scale of Compensation*
(i)	Death	100%
(ii)	Loss of Two limbs or sight of two eyes or one limb or sight of one eye	100%
(iii)	Loss of one limb or sight of one eye	50%
(iv)	Permanent total disablement other than named above	100%

11. The Medical Board under Ex.C1, has assessed the disability of the claimant at 10% permanent disability. The Tribunal in any event, assessed the disability at 40%. Whatever may be the percentage of the disability assessed by the Tribunal, it is seen from the terms and conditions of the policy that the disability assessed is not included in the Schedule IV of the terms and conditions of the policy. Therefore, in view of the decision of this Court in **Royal Sundaram Allianz Insurance Company Limited** v. **Somu in** CMA.No. 448 of 2016 and CMP.No. 3404 of 2016, dated 04.03.2020 as well as **The Cholamandalam MS General Insurance Company Limited** v. **Ramesh Babu,** in CMA.No. 2434 of 2019 and CMP.No. 11121 of 2019, dated 02.09.2020 the Insurance Company in the present case is not liable to pay compensation to the Claimant for the injuries sustained by him in the accident.

12. The learned counsel for the appellant/Insurance Company submits that the entire amount awarded by the Tribunal has already been deposited at the time of passing of interim order dated 30.04.2021 by this Court in CMP.No. 8061 of 2021 in CMA.No. 1535 of 2021. Therefore, the appellant/Insurance Company is directed to withdraw the entire amount already deposited by it.

13. Accordingly, the impugned Award and Decree in MCOP.No. 153 of 2016, dated 04.09.2019 passed by the learned Chief Judicial Magistrate, [Motor Accident Claims Tribunal], Nagapattinam, are hereby set aside. The Civil Miscellaneous Appeal is allowed. There shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

25.04.2023

Index : Yes / No
Speaking Order : Yes/ No
Neutral Citation : Yes/No
MSM

To

1. The Chief Judicial Magistrate,
   Motor Accident Claims Tribunal, Nagapattinam.

2. The Section Officer, V.R. Section,
   High Court of Madras, Chennai-600 104.

N. MALA, J

msm

C.M.A.No. 1535 of 2021

25.04.2023