



C.M.A.No.3271 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.12.2023

CORAM:

THE HONOURABLE MR. JUSTICE K.RAJASEKAR

Civil Miscellaneous Appeal No.3271 of 2021
and
Civil Miscellaneous Petition No.18584 of 2021

The Head Office,
HDFC ERGO General Insurance Co Ltd.,
1st Floor, 165-166, Backbay Reclamation,
H.T.Parakh Marg,
Churchgate, Mumbai 400 020. ... Appellant / 3rd respondent

Vs.

1. V. Narendiran ... Respondent / Petitioner
2. M. Subramani
[R2 remained ex-parte before the Tribunal.
Hence, notice to R2 dispensed with]
3. The Head Office,
Shriram General Insurance Co Ltd.,
E-8, EPIP. RIICO, Sitapura,
Jaipur, Rajasthan 302 022. ... Respondents / Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and decree dated 08.11.2018 made in M.C.O.P.No.611 of 2017 on the file of the Motor Accidents Claims Tribunal, Special Sub Court, Krishnagiri.

For Appellant	:	Mr. K. Vinod
For R1	:	No appearance
For R2	:	Ex-parte



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For R3

: Ms. K. Poomalai
JUDGMENT

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This Civil Miscellaneous Appeal has been filed by the Insurance Company challenging the liability fixed on them to pay the compensation for the injuries sustained by the claimant herein, who is the insurer of the appellant herein, in the award passed in M.C.O.P.No.611 of 2017, dated 08.11.2018, on the file of the Motor Accidents Claims Tribunal, Special Sub Court, Krishnagiri.

2. The parties are referred to hereunder according to their litigative status and ranking before the Employees State Insurance Court, Puducherry.

3. The case of the claimant in brief is that on 16.08.2014 at about 6.00 a.m., the petitioner was proceeding in a Maruthi Suzuki Car bearing Registration No.PY 01/BD-1354 towards Mysore slowly and cautiously when the car was proceeding on the Chennai to Krishnagiri National Highways near Orappam Santhai, opposite to Krishnan House, a Container Lorry, bearing Registration No.TN 28 AL 5157 driven by its



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driver in a rash and negligent manner with high speed without noticing the car which was coming behind the lorry had suddenly entered into the middle of the road. Due to which, the car driver has lost control and hit behind the Container Lorry, which resulted in causing grievous injuries to the petitioner. In this regard, a criminal case was also registered against the petitioner in Crime No.320 of 2014 under Sections 279 and 337 IPC on the file of the Kandhikuppam Police Station. Immediately, the injured was admitted into Government Hospital, Krishnagiri and thereafter, he was admitted into Private Hospital, Pondicherry for further treatment. After discharged from the Hospital, the petitioner has filed claim petition under Section 163-A of the Motor Vehicles Act, claiming compensation of Rs.5,00,000/-.

4. The case of the Respondent No.3 is that, injured is the insurer of the Respondent No.3/Appellant herein, since criminal case registered against the claimant and he is a tortfeasor, the insurer is not liable to pay compensation to the owner of vehicle i.e., claimant.

5. The learned counsel for the claimant has submitted that in



WEB COPY this case, the petition filed under Section 163-A of the Motor Vehicles Act and First Information Report is also against the claimant herein. Since the first respondent is the owner of the vehicle, the second respondent is the another owner of the lorry which involved in the accident, the petition filed under Section 163-A of the Motor Vehicles Act is maintainable against them hence the insurer of the first respondent vehicle is also liable to pay compensation.

6. The learned counsel for the second respondent – Shriram General Insurance Co., Ltd., has submitted that totally two claim petitions were filed relating to this accident. In another claim petition filed by one of the passenger, it is held that all the respondents are liable to pay compensation to the claimant therein in M.C.O.P.No. 610 of 2017, both the Insurance Company have satisfied the claim and they have not raised any objections or challenged the order of Tribunal. Since in other case, the appellant herein has satisfied the decree, he shall be liable to satisfy this case also hence prays to dismiss the appeal.

7. I have considered the rival submissions made on both sides and also perused the records available.

8. The claimant herein is the owner of the car and the appellant



herein is the insurer of the claimant. It has been held by the Tribunal that, eventhough the claimant is not entitled to get compensation from his insurer, he is entitled to get compensation by invoking personal coverage. Thereby, the Tribunal has held that the appellant herein is liable to pay compensation. This Court is unable to accept the said proposition since it is contrary to the law laid down by the Hon'ble Apex Court in ***Ram Khiladi and Others vs. United India Insurance Company Limited and Others [2020 (2) SCC 550]***. It is held that, that if the claimant is the owner of the vehicle and tortfeasor, he is not entitled to claim compensation from his own insurer, unless there is third party risk involved.

9. In this case, as stated by both sides that the claim made by the one of the injured in this case in M.C.O.P.No.610 of 2017 has been already satisfied by both the respondents since they are liable to pay compensation as per the decree passed by the Tribunal. Whereas, in this case, the Tribunal has held that the claimant is not entitled to get compensation under Section 163-A of the Motor Vehicles Act, however, he is entitled to get compensation under personal coverage. This shows that the Tribunal has not inclined to award compensation by invoking Section 163-



A of the Motor Vehicles Act. It is also submitted by the learned counsel for the appellant/Insurance Company that the injuries sustained by the claimant is only a simple injury hence as per the policy coverage i.e., the contract, he is not entitled for getting compensation for the simple injuries sustained by him.

10. The evidence of P.W.1 - the claimant herein shows that the lorry driver while proceeding on the Chennai to Krishnagiri National Highways near Orappam Vaara Sandhai, he suddenly stopped the Lorry in the middle of the road, which resulted in causing the accident. In the cross examination also he has reiterated the same and disputed that he has driven the vehicle negligently but no contra evidence has been adduced to dispute his evidence.

11. As held by the Hon'ble Apex Court in **Ramkhiladi** case cited above and even in the petition filed under Section 163-A of the Motor Vehicles Act, the Insurance Company is entitled to adduce evidence to prove the negligence on the part of the claimant herein but no such contra evidence has been adduced. Facts proved in this case is that, driver of lorry negligently stopped the vehicle in the middle of the road, and claimant is not tortfeasor. Since lorry driver is



tortfeasor, his owner and insurer are liable to pay compensation. The direction issued to the insurer of the claimant's based on personal coverage is not maintainable. This Court is of the view that the entire negligence shall be fixed on the driver of the lorry belongs to the third respondent therein and insured with the second respondent therein. Accordingly, this Court finds that the third respondent-Shriram General Insurance Company is liable to pay the entire compensation.

12. In the result, the Civil Miscellaneous Appeal filed by the Insurance Company herein is allowed. The third respondent-Shriram General Insurance Company is directed to deposit the entire compensation amount as awarded by the Tribunal together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P.No.611 of 2017, on the file of the Motor Accidents Claims Tribunal, Special Sub Court, Krishnagiri. On such deposit, the first respondent/claimant is permitted to withdraw the amount, along with proportionate interest and



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costs, less the amount, if any, already withdrawn. In other aspects the award of the Tribunal shall stand confirmed. There shall be no costs in the present appeal. Consequently, the connected miscellaneous petition stands closed.

13.12.2023

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Index:Yes/No

Speaking Order:Yes/No

Neutral Citation Case: Yes/No

To:

1. The Special Sub Judge,
Motor Accidents Claims Tribunal,
Krishnagiri.
2. The Section Officer,
V.R.Section,
High Court, Chennai.



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K.RAJASEKAR,J.

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