IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.04.2023

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THE HON'BLE MRS.JUSTICE N.MALA

C.M.A.No.1432 of 2021
and C.M.P.No.7463 of 2021

The Branch Manager,
M/s. ICICI LOMBARD GENERAL
INSURANCE COMPANY LTD.,
Trichy, No.5, 3rd Floor,
Arcade Annamalai Nagar,
Karur Bye Pass Road,
Trichy-1. ... Appellant

vs.

Manivasagan ... Respondent

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 31.10.2019 in M.C.O.P.No.274 of 2017 on the file of the Motor Accident Claims Tribunal (Subordinate Judge), Jayankondam.

For Appellant : Mr.R.Sree Vidhya

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JUDGMENT

This Civil Miscellaneous Appeal is filed against the Judgment and Decree dated 31.10.2019 in M.C.O.P.No.274 of 2017 on the file of the Motor Accident Claims Tribunal (Subordinate Judge), Jayankondam.

2.The Insurance Company has filed the above appeal challenging the liability to pay the compensation.

3.The claim petition was filed by the owner of the Vehicle for the injuries sustained by him in the motor accident, which occurred on 01.06.2015. While the claimant was travelling in his Xylo car bearing Registration No.TN-61-E-3573 from Trichy Tollgate to Lalgudi Main Road near Murugan Kovil from West to East direction, the driver of the car drove the car in a rash and negligent manner and dashed against a tamarind Tree, due to which the claimant sustained grievous injuries. The claimant therefore filed the claim petition claiming a sum of Rs.10,00,000/- as compensation for the injuries sustained by him in the accident.

4.The appellant/Insurance company in it's counter denied all the contentions raised in the claim petition. The Insurance Company contended that it was not liable to pay the compensation to the insured, as the insured cannot be construed as a third party, as he was himself the owner of the vehicle.

5.The Claims Tribunal on an assessment of entire evidence on record rendered a finding that the accident occurred due to the negligence of the driver of the claimant and therefore, the Tribunal awarded a sum of Rs.3,77,157/- along with 7.5% interest.

6.The claimant has not chosen to appear either in person or through his counsel before this Court.

7.The learned counsel for the appellant submitted that the Tribunal failed to note that under Ex.A1 Policy coverage was restricted to the injuries stated therein. The learned counsel submitted that the terms and conditions stipulated in the policy should be strictly construed for the purpose of fixing the liability on the Insurance Company.

8.The learned counsel relied on the Judgment of this Court in the case of ***Royal Sundaram Allianz Insurance Co. Ltd., Vs. Somu in CMA.No.448 of 2016 dated 04.03.2020,*** as also the Judgment in the case of ***Branch Manager, Oriental Insurance Co. Ltd., Thiruvannamalai Vs. Poongavanam in CMA.NO.1017 of 2016 dated 12.03.2020***.

9.I have heard the learned counsel for the appellant and I have perused the materials placed on record.

10.It is seen that the claimant as the owner of the Xylo car while travelling from Trichy Tollgate to Lalgudi Main Road met with the accident due to the negligence of his driver. The claimant sustained grievous injuries in the accident and therefore filed the claim petition under Section 166 of the Motor Vehicle Act claiming compensation for the injuries sustained by him in the accident. The claimant was the owner of the vehicle and as such he could not be considered as a Thirty Party. The policy was a package policy covering liability to third party and also for the owner/driver. According to the learned counsel for the Insurance Company, the policy as far as the claimant is considered is contractual in nature and therefore the compensation is payable only in terms and conditions of the policy. According to the learned counsel, the injuries sustained by the claimant were not covered by the policy and as such the Insurance Company was not liable to pay the compensation.

11.The learned counsel relied on the Judgment in the case of ***Royal Sundaram Allianz Insurance Company Limited Vs. Somu*** (cited supra), and submitted that the terms and conditions for Package Policy are standard and hence relied on the extract of the conditions of the Policy referred to therein to support her submission that the injuries suffered by the claimant were not covered by the Package Policy. In the said judgment, the conditions of the Policy are extracted and they are as follows.

Section IV – Personal Accident Cover for Owner-Driver, which reads as under:-

"SECTION IV – PERSONAL ACCIDENT COVER FOR

OWNER-DRIVER Subject otherwise to the Terms, Exceptions, Conditions and Limitations of this Policy, 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 or whilst mounting into/dismounting from or travelling in the insured vehicle as a co-driver, caused by violent accidental external and visible means which independent of any other cause shall within six calendar months of such injury result in:

Details of injury	*Scale of Compensation*
(i) Death	*100% of CSI*
(ii) Loss of two limbs or sight of two eyes or one limb and sight of one eye	*100% of CSI*
(iii) Loss of one limb or sight of one eye	*100% of CSI*
(iv) Permanent Total Disablement from injuries other than named above.	*100% of CSI*

The above said conditions of the policy apply to the present case also as the conditions are standard.

12.In the present case, it is seen that the claimant sustained 20% injury and therefore the learned counsel is right in her submission that the injuries sustained by the claimant are not covered by the policy. It is trite that the policy of the Insurance as far as the coverage to owner/driver is concerned is purely contractual in nature, in contrast to the coverage for third parties which is statutory in nature. In contractual liability the parties are bound by the terms and conditions stipulated therein. The Tribunal therefore erred in not considering the terms of the Policy, I am fortified in my said view by the Judgment of this Hon'ble Court reported in ***2020 (1) TN MAC 547***, wherein it was held as follows:

> *"9.Reading of the conditions stipulated in the Policy with reference to Personal Accident Cover for Owner-Driver, this Court is of the considered opinion that the Tribunal has committed an error in not considering the nature of the Policy. Contrarily, the Tribunal proceeded on the ground that there is a coverage of Policy and the Respondent-Claimant sustained injuries and taken treatment and therefore, the Respondent-Claimant is entitled for Compensation. The Tribunal is bound to see the nature of the Policy and the coverage as well as the terms and conditions stipulated*

in the Policy."

13.Therefore in my view if the conditions of the policy do not cover the nature of injuries sustained by the claimant, then the liability cannot be mulcted on the insurance company even if additional premium was paid for personal accident coverage. In the light of the above discussion, I am of the view that the appeal deserves to be allowed.

14.It is submitted by the learned counsel for the appellant that a sum of Rs.2,00,000/- has been deposited before the Tribunal, in pursuance of the order passed by this Hon'ble Court. The appellant Insurance Company is permitted to withdraw the said amount.

15.Accordingly, this Civil Miscellaneous Appeal is allowed, the Judgment and decree dated 31.10.2019 in M.C.O.P.No.274 of 2017 on the file of the Motor Accident Claims Tribunal (Subordinate Judge), Jayankondam is setaside. There shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

25.04.2023

Index : yes/no
Internet : yes/no
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To

1.The Motor Accident Claims Tribunal,
(Subordinate Judge),
Jayankondam.

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

N.MALA, J.

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C.M.A.No.1432 of 2021

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