IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.11.2023

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.No.1272 of 2020
And
C.M.P.No.8881 of 2020

Manager,
M/s.TATA AIG General
Insurance Company Limited,
'Piramal Tower', 9th Floor,
Peninsula Corporate Park,
Ganapatrao Kadam Marg,
Lower Parel,
Mumbai – 400 013. ... Appellant

Vs.

Selvam ... Respondent

Prayer:

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the decree and judgment dated 15.11.2019 passed in M.C.O.P.No.624 of 2017, by the Hon'ble Motor Accidents Claims Tribunal, (In the Court of Special Subordinate Judge), at Krishnagiri.

For Appellant : Mr.J.Michael Visuvasam

For Respondent : Mr.J.Pradeep

J U D G M E N T

The respondent Insurance Company before the Motor Accidents Claims Tribunal is the appellant herein. This appeal has been filed seeking to set aside the judgment and decree dated 15.11.2019 passed by the Motor Accidents Claims Tribunal, (In the Court of Special Subordinate Judge), Krishnagiri, in M.C.O.P.No.624 of 2017.

2.The brief facts of the case is that on 13.09.2013, at about 7.25p.m., the respondent was proceeding in his TVS Phoenix bearing Registration No.TN 24-Q-3966 in Kallavi to Uthangarai Road near M.G.R.Nagar, Oonampalayam. At that time the respondent met with an accident with a Bajaj Discover motorcycle bearing Registration No.TN 24-L-9096 which was coming in the opposite direction, due to which, he sustained injuries.

3.Thereafter, the injured claimant/ respondent filed claim petition before the Motor Accidents Claims Tribunal, claiming compensation of Rs.15 Lakhs. After adjudication, the Motor Accidents Claims Tribunal awarded a sum of Rs.4,04,031/- with interest at the rate of 7.5% p.a. from the date of filing of the petition till the date of deposit and proportionate costs and directed the appellant Insurance

Company to deposit the compensation. Aggrieved by the same, the appellant Insurance Company has filed this appeal.

4.The learned counsel appearing for the appellant submitted that the claimant is the owner of the motorcycle and he instead of filing claim petition as against the owner of the offending vehicle and its insurer, filed claim petition as against the appellant under Section 166 of the M.V.Act, which is not sustainable one. Though the policy is a package policy, the driver cum owner can claim compensation only in the case of death or loss of limb, however, in the present case, it is only simple injuries and hence, the claimant is not entitled to claim compensation as against the Insurance Company, however, the Tribunal without considering the same, inadvertently, passed the impugned award. In support of his contentions, the learned counsel relied upon the decision of this Court reported in ***2021 ACJ 1005 [Royal Sundaram Alliance Insurance Company Limited Vs. Somu]***.

5.The learned counsel appearing for the respondent/ claimant submitted that the Tribunal after considering all the factual aspects, awarded the compensation which is just and reasonable and hence, the impugned judgment warrants no interference.

6.Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the respondent and perused the materials available on record.

7.Admittedly, the claimant is the owner of the vehicle. The very same issue was considered by this Court in the decision reported in ***2021 ACJ 1005 [Royal Sundaram Alliance Insurance Company Limited Vs. Somu]***, the relevant portion of which is extracted hereunder:

> *"8.Section IV of the policy – Personal Accident Cover for Owner-Driver, 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 per cent of CSI*
ii)Loss of two limbs or sight of two eyes or one limb and sight of one eye	*100 per cent of CSI*
iii)Loss of one limb or sight of one eye	*50 per cent of CSI*
iv)Permanent total disablement from injuries other than named above.	*100 per cent of CSI*

Provided always that:

(1)The compensation shall be payable under only one of the items (i) to (iv) above in respect of the owner-driver arising out of any one occurrence and the total liability of the Insurer shall not in the aggregate exceed the sum of Rs.2,00,000 during any one period of Insurance.

(2)No compensation shall be payable in respect of death or bodily injury, directly or indirectly, wholly or in part, arising or resulting from or traceable to (a) intentional self-injury, suicide or attempted suicide, physical defect or infirmity or (b) an accident happening whilst such person is under the influence of intoxicating liquor or drugs.

(3) Such compensation shall be payable directly to the Insured or to his/her legal representatives whose receipt shall be the full discharge in respect of the injury to the Insured.

(4) This cover is subject to:

(a)The owner-driver is the registered owner of the vehicle insured herein.

(b)The owner-driver is the insured named in this policy.

(c)The person driving holds an effective driving license at the time of the accident and is not disqualified from holding or obtaining such a license.

(d)The person holding an effective Learner's license may also drive the vehicle and that such a person satisfies the requirements of Rule 3 of the Central Motor Vehicles Rules, 1989.

(e) Where more than one vehicle is owned by the Insured, he/she can opt for this under one vehicle only."

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.

10.When the question of liability is raised by the

Insurance Company, the Tribunal is bound to adjudicate the said issue for the purpose of arriving a conclusion that the respondent-claimant is entitled for compensation or not.

11.This being the primary question to be considered, the Tribunal, in the present case, has failed to consider this aspect and awarded compensation on the ground that there is a policy and the accident was established and the medical treatment was also established and accordingly, awarded compensation by fixing the disability as 35 per cent.

12.The learned counsel appearing on behalf of the respondent- claimant opposed the contentions by stating that though the policy is Personal Accident Cover, the Tribunal has considered the fact that regarding the nature of the injuries and awarded compensation. Thus, there is no infirmity.

13.This Court is of the considered opinion that the terms and conditions stipulated in the policy is of paramount importance for the purpose of deciding the liability. The Insurance Company is not responsible in respect of the accident, which is not covered under the policy. The policy being a contract and the claimants are entitled to claim compensation only with reference to the terms and conditions of the contract and certainly not *beyond the conditions agreed between the parties. Thus, the policy and the terms and conditions stipulated therein are the factors to be ascertained for the purpose of fixing the liability as far as the Insurance Company is concerned.*

14.This being the factum established before this Court, this Court is of the considered opinion that the Tribunal has committed an error in not considering the vital ground raised by the appellant that there is no coverage in the policy and accordingly, the judgment and decree dated 12.08.2015 passed by the learned Principal District Judge, Principal District Court-cum-Motor Accidents Claims Tribunal, Ariyalur in M.C.O.P.No.94 of 2012 is quashed and consequently, C.M.A.No.448 of 2016 stands allowed. However, there shall be no order as to costs. Consequently connected miscellaneous petition is closed."

8.This Court in the decision cited supra has held that the terms and conditions stipulated in the policy is of paramount importance for the purpose of deciding the liability. The Insurance Company is not responsible in respect of the accident, which is not covered under the policy. The policy being a contract and the claimants are entitled to claim compensation only with reference to the terms and conditions of the contract and certainly not beyond the conditions agreed between the parties. Further Section IV – Personal Accident Cover for owner –

driver makes it clear that for death – 100 per cent of CSI, for loss of two limbs or sight of two eyes or one limb and sight of one eye – 100 per cent of CSI, for loss of one limb or sight of one eye – 50 per cent of CSI, however, in the present case, it is only injuries, in which, the claimant is not entitled to claim compensation.

9.Following the ratio laid down in the decision of this Court reported in ***2021 ACJ 1005 [Royal Sundaram Alliance Insurance Company Limited Vs. Somu]***, the appeal is allowed. The judgment and decree dated 15.11.2019 passed by the Motor Accidents Claims Tribunal, (In the Court of Special Subordinate Judge), Krishnagiri, in M.C.O.P.No.624 of 2017, is set aside. The Insurance Company is permitted to withdraw the entire amount already deposited by them.

10.The civil miscellaneous appeal is allowed. No costs. Consequently, the connected miscellaneous petition is closed.

30.11.2023

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Index: Yes/ No
Speaking Order: Yes/ No
NCC: Yes/ No
To
1.The Motor Accidents Claims Tribunal,
(In the Court of Special Subordinate Judge), Krishnagiri.

M.DHANDAPANI,J.
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