IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.03.2023

CORAM

THE HON'BLE MRS.JUSTICE N.MALA

C.M.A.No.3 of 2021
and CMP.No.31 of 2021

The Manager,
The Oriental Insurance Company Limited,
81/C, K.R.C. Complex,
Chennai Salai,
Krishnagiri. … Appellant

vs.

K.Rajendiran … Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree made in MCOP.No.53 of 2016, dated 07.08.2019, on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate Court, Krishnagiri District.

For Appellant : Mr.E.Rajadurai
for M/s.M.B.Gopalan Associates

For Respondent : No Appearance

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JUDGMENT

The Insurance company has filed the above appeal challenging the Judgment and Decree made in MCOP.No.53 of 2016, dated 07.08.2019, on the file of the Motor Accidents Claims Tribunal, Chief Judicial Magistrate Court, Krishnagiri District.

2.The appeal is filed by the Insurance Company challenging its liability to satisfy the award passed by the Claims Tribunal. As the nature of accident, negligence and quantum are not disputed by the parties, the facts of the case are not dealt in detail. For the purpose of the appeal it is sufficient to state that the claimant who is the owner cum driver of the Eicher Van sustained grievous injuries in an accident which occurred on 18.09.2010 and therefore filed a claim petition under the 163-A of the Motor Vehicle Act, claiming Rs.5,00,000/- as compensation.

3.The Claims Tribunal on an assessment of the evidence on record, though rendered a finding of negligence against the claimant held that, as the claim petition was filed under the 163-A of the Motor Vehicle Act, the claimant was entitled to the compensation amount determined by it at Rs.2,82,761.40/-. Aggrieved by the Judgment and Decree of the Tribunal, mulcting the liability on it, the Insurance Company has filed the appeal.

4.The learned counsel for the Insurance Company at the time of arguments, raised the following two grounds.

> *1.That the Claim Petition under Section 163-A of the Motor Vehicle Act by the owner of the vehicle was not maintainable.*
>
> *2.That the injuries sustained by the claimant/owner were not covered by the P.A. coverage and so the Tribunal erred in travelling beyond the terms of the Policy, which Policy was contractual in nature.*

5.The learned counsel therefore prayed that the appeal be allowed on the above said grounds.

6.I have heard both the learned counsel and I have perused the records.

7.As already stated, that the claimant as the owner/driver of the vehicle, Tata Eicher, met with an accident on 18.09.2020, sustained grievous injuries and filed a Claim Petition under Section 163-A of the Motor Vehicle Act is not disputed. The only dispute is as to the liability of the appellant Insurance Company to satisfy the award of the Tribunal.

8.The first ground, on the maintainability of the claim petition, under Section 163-A of the Motor Vehicle Act is concerned, the law is well settled. The Hon'ble Supreme Court has categorically held that the liability under Section 163-A of the Motor Vehicle Act is that of the owner of the vehicle, since a person cannot be both, claimant and recipient the claim petition by the owner or his legal heirs under Section 163-A of the Motor Vehicle Act was not maintainable. Useful reference in this regard can be made to the following two Judgments:

1.Oriental Insurance Company Vs. Rajni Devi reported in ***2008 (5) SCC 736 and***

2.Ningamma and others Vs. United India Insurance Company Ltd., reported in ***2009 (13) SCC 710.***

9.Hence I am of the considered view that the Claims Tribunal erred in entertaining the Claim Petition under Section 163-A of the Motor Vehicle Act.

10.On the second ground raised by the learned counsel that the PA coverage under the Policy did not cover the injuries sustained by the claimant, the learned counsel relied on the following two Judgments of this Hon'ble Court in support of his contention.

1.Cholamandalam Ms General Insurance Company Ltd. Vs. Ramesh Babu reported in ***MANU / TN / 4713 / 2020; and***

2.Order dated 25.03.2021 in the case of

M/s.Iffco Tokio General Insurance Company Limited Vs Sivakumar in CMA.No.2784 of 2017.

11.Before discussing the law on the subject, it necessary to first, discuss the nature of injuries sustained by the claimant, because the same has a bearing on the Coverage under the PA policy. In the Claim Petition, the nature of injuries sustained by the claimant are stated as "Swelling right foot, pain swelling right foot, fracture foot right side and multiple injuries all over the body". The claimant was referred to the Medical Board which certified under Ex.CW1 that the disability sustained by the claimant due to the injuries was 30% partial permanent.

12.Whereas under Section 147 of the Motor Vehicle Act, a Policy is compulsory and statutorily mandated to cover risk to third parties for bodily injuries, death and damage to property, for an owner of the vehicle coverage is not mandatory. The owner can in his own interest contract to cover risk to himself by paying additional premium. Therefore the coverage as far as the owner is concerned is purely contractual and hence is subject to the terms and conditions of the Policy. In the present case, the policy is marked as Ex.R1 and the terms and conditions of the policy are marked as Ex.R2.

13.From a reading of the Policy it is seen, that in the Policy the Personal Accident Coverage is as follows:

"Section IV – PERSONAL ACCIDENT COVER FOR OWNER-DRIVER

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 form or traveling 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:

Nature of Injury	Scale of Compensation
(i) Death	100%
(ii) Loss of two limbs or sight of two eyes or one limb and sight of one eye	100%
(iii) Loss of one limb or sight of one eye	50%
(iv) Permanent total	100%

disablement from injuries other than named above	

Provided always:

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 lakh 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) international 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 owner-driver holds an effective driving license, in accordance with the provisions of Rule 3 of the Central Motor Vehicles Rules, 1989, at the time of the accident."

14.From a reading of the above, it is clear that the injuries and the disability sustained by the claimant are not covered by the Policy. It is also well settled in law that in case of third party the liability of the Insurance Company is unlimited, but, for owner's liability, it being contractual in nature, is limited to the extent of coverage stipulated under the terms and conditions of the contract.

15.The Judgments relied on by the learned counsel for the appellant in Cholamandalam Ms. General Insurance Company Vs. Ramesh Babu and M/s.Iffco Tokio General Insurance Company Limited Vs Sivakumar, in my view squarely apply to the facts of the case. In Cholamandalam Ms. General Insurance Company Vs. Ramesh Babu it was held as follows:

"34.It is important to note that the terms and conditions stipulated in the Insurance policy are of

paramount importance for the purpose of deciding the liability as well as to fix the quantum of compensation to be paid. In the event of no coverage under the policy, then the Insurance M/S.The Cholamandalam Ms General vs Ramesh Babu on 2 September, 2020 C.M.A.No.2434 of 2019 company cannot be held liable to pay compensation. The policy being contractual in nature, the person claiming benefit under the policy must establish that he is entitled for compensation with reference to the terms and conditions agreed between the parties in the signed contract. Undoubtedly, no person is entitled to claim any benefit beyond the scope of the terms and conditions agreed between the parties. Thus, nature of policy, terms and conditions stipulated, which all are agreed upon are the factors to be ascertained preliminarily by the Courts for the purpose of entertaining the Claim Petitions as well as to fix the liability to pay compensation."

16.In CMA.No.2784 of 2017 vide Order dated 25.03.2021 in the case of M/s.Iffco Tokio General Insurance Company Limited Vs Sivakumar it was held as follows:

"9.The claimant as insured is entitled to get compensation only if the injury falls under any of the

injury mentioned in the contract. Since the injury sustained by the claimant does not fall within the scope of P.A. cover, the award of the Tribunal, treating the claimant as third party, is erroneous and liable to be set aside. Accordingly, the appeal is allowed and the award of the Tribunal is set aside. The appellant Insurance Company is not liable to pay any compensation to the insured/owner of the vehicle, since the injury sustained by him does not fall within the category of the injury mentioned under P.A. cover of the contract. As a result, if any amount deposited by the Insurance Company, the Insurance Company is permitted to withdraw the same."

17.In the light of the above discussions, I am of the considered view that the Judgment and Decree of the Claims Tribunal is unsustainable and hence it is set aside. The appeal is allowed without costs. The Insurance Company is permitted to withdraw the amount, if any, deposited by it. Consequently, the connected Miscellaneous Petition stands closed.

17.03.2023

Index : yes/no
Internet : yes/no
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To

1.The Motor Accident Claims Tribunal,
Chief Judicial Magistrate Court,
Krishnagiri District.

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

N.MALA, J.

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C.M.A.No.3 of 2021

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