



C.M.A.No.689 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.12.2023

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.No.689 of 2021

And

C.M.P.No.4157 of 2021

The Oriental Insurance Company Limited,
25/C, 3rd Floor, Arunagiri Complex,
Bye-pass Road,
Hosur – 635 109.

... Appellant

Vs.

Ramalingam

... Respondent

Prayer:

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree made in M.C.O.P. No.1090 of 2011, dated 01.08.2019 on the file of the Motor Accidents Claims Tribunal, Chief Judicial Magistrate Court, Krishnagiri District.

For Appellant : Ms.C.Harini
for Mr.E.Rajadurai

For Respondent : Ms.Vijayalakshmi K.
for M/s.Dass Viswa Associates



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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 against the judgment and decree dated 01.08.2019 passed by the Motor Accidents Claims Tribunal, Chief Judicial Magistrate Court, Krishnagiri District, in M.C.O.P.No.1090 of 2011.

2.The brief facts of the case is that on 03.10.2007, at about 8.30p.m., the respondent was proceeding in his Yamaha Crux Bike bearing Registration No.TN 29 M 1640 from Samalpatty to his village near Manal Pallam. At that time a Hero Honda Splendor Bike bearing Registration No.TN 24 B 6850 came in the opposite direction and due to the bad condition of the road and lightings, both the motorcycles dashed and both the motorcyclists sustained injuries.

3.Thereafter, the injured claimant/ respondent filed claim petition before the Motor Accidents Claims Tribunal, claiming compensation of Rs.4 Lakhs. After adjudication, the Motor Accidents Claims Tribunal awarded a sum of Rs.3,42,501/- with interest at the rate of 8% p.a. from the date of petition till the date of realisation



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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 policy is a comprehensive policy and the claimant is the owner of the motorcycle and as per the policy pillion rider alone is entitled for compensation and driver cum owner is not entitled to personal accident coverage for injury and hence, the claimant cannot claim compensation as against the Insurance Company, however, the Tribunal without considering the same, inadvertently, passed the impugned award.

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



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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 979 [Cholamandalam MS General Insurance Company Limited Vs. Ramesh Babu]**, wherein, this Court held that personal accident cover for owner cum driver is contractual in nature and in the absence of any statutory liability of Insurance Company, provisions of Motor Vehicles Act cannot be invoked. Further Section IV – Personal Accident Cover for owner – driver makes it clear that 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.

8. Following the ratio laid down in the decision of this Court reported in **2021 ACJ 979 [Cholamandalam MS General Insurance Company Limited Vs. Ramesh Babu]**, the appeal is allowed. The judgment and decree dated 01.08.2019 passed by the



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Motor Accidents Claims Tribunal, Chief Judicial Magistrate Court, Krishnagiri District, in M.C.O.P.No.1090 of 2011, is set aside. The Insurance Company is permitted to withdraw the entire amount already deposited by them.

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

15.12.2023

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Index: Yes/ No

Speaking Order: Yes/ No

NCC: Yes/ No

To

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



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