IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.02.2023

CORAM :
THE HONOURABLE MR. JUSTICE J.SATHYA NARAYANA PRASAD

C.M.A.No.3348 of 2014
and M.P.No.1 of 2014 & C.M.P.No.6982 of 2017

Branch Manager,
United India Insurance Co. Ltd.,
Vellore. … 2nd Respondent / Appellant

Vs.

1.S.Venkataraman … Petitioner / Respondents

2.S.Venkataraman … 1st Respondent

This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award and decree dated 05.06.2012 made in M.C.O.P.No.223 of 2010 on the file of the Motor Accidents Claims Tribunal, III Additional District and Sessions Court, Thirupathur.

For Appellant : Mr.S.Arun Kumar

For Respondents 1 : Mr.R.Subramanian

For Respondent 2 : Exparte in the lower court itself

JUDGMENT

This Civil Miscellaneous Appeal No.3348 of 2014 has been filed challenging the award and decree dated 05.06.2012 made in M.C.O.P.No.223 of 2010 on the file of the Motor Accidents Claims Tribunal, III Additional District and Sessions Court, Thirupathur, awarding compensation of a sum of Rs.1,00,000/- to the first respondent.

2. The brief facts of the case are as follows:

The first respondent is an active practising lawyer at Tirupattur. On 10.02.2005, after attending the court work, the first respondent was riding the motor cycle bearing Registration No.TN-23 K-1009 to his house situated at Hayath Nagar, Tirupattur. At about 2 P.M. near 3rd street of Sama Nagar, Tirupattur, a bull which was chased by a boy suddenly crossed the road and in order to avoid hitting against the bull, the first respondent applied break and in that process, the vehicle skidded and fallen down. As a result of the mishap, the first petitioner had sustained serious bleeding injuries over the left elbow, left eyebrow, right knee and fracture of left leg “Tibia”. Immediately, he was taken to a Private Clinic at Tirupattur and from there he was shifted to VGM Hospital, Tirupattur to get First-Aid to save his life. Later he was admitted at Appasamy Medicare Centre Pvt., (Ltd) Hospital, Arumbakkam, Chennai as inpatient and on medical investigation, it was diagnosed that he had suffered fracture of medical condyle (L) Tibia. He has spent a sum of Rs.57,200/- towards his medical expenses. Due to the mishap arisen out of the use of motor cycle, which was insured with the appellant, the first respondent filed a claim petition, seeking compensation of a sum of Rs.5,00,000/-. On consideration of the materials and evidence available on record, the Tribunal has awarded a compensation of a sum of Rs.1,00,000/-. Aggrieved by the said order, the appellant/Insurance Company has come out with the present appeal.

3. The learned counsel for the appellant/Insurance Company has submitted that respondent being the tort feasor is not entitled to maintain the claim petition and the Tribunal has failed to note that under section 166 only tort liability can be adjudicated. He further submitted that the contract between the appellant and the respondent is out side the purview of under section 147 and hence, the claim should have been dismissed.

4. He further submitted that the accident has taken place out of the respondent own negligence and not due to any third party. The insurance policy covers only third party risks and not of the owner. The claimant/respondent had also taken a policy covering personal accident claim and paid a premium of Rs.70/- and the respondent/claimant has to approach the Civil Court for claiming the same.

5. Learned counsel for the appellant/Insurance company further contended that the Tribunal did not considered the Ex.R.1 and R.2, in which, the appellant/insurance company has under taken to indemnify the claim made against the insured respondents. He further submitted that as per the terms of contract, the appellant is liable to pay the sum assured under Personal Accident Cover, which is subject to terms and condition. The Tribunal held in holding that the appellant is liable to pay a sum of Rs.1,00,000/- when the alleged injury and disability did not fall within the category of permanent disability specified in the terms and conditions of the policy. Hence, the appellant is not liable to pay the compensation of sum of Rs.1,000,000/- and the same is challenged under the present appeal.

6. Per contra, learned counsel appearing for the first respondent submitted that the accident has not been disputed by the Tribunal but the appellant/Insurance company only contended that the claimant himself being the owner and the accident has been caused by his own act; he is not entitled to any claim. The insurance policy has been marked by the insurance as Ex.P.9. In the policy there are 2 parts, one is owner damager task 586.60 (A part) Third party Basic 152 to deemed persons (B part) total amount Rs.1,00,000/- premium Rs.70/-. The insurance officer has been examined R.W.1, who let in evidence that the appellant/insurance company is liable to pay only for the action caused by the third party. There is no specific clause *"not entertained such claims arising out of own negligence of the injured"*. However, he has also stated that on the basis of payment of Rs.70/- towards premium, the compensation can be paid by the appellant/Insurance company.

7. He further submitted that the Tribunal determined the issue under Section 163 A of the Act relied on the judgment in 2012 2 SCC 356. It was further held by the Tribunal that the accident had not been taken place due to any negligent act of the claimant but the claimant to avoid collusion with the

bull which had crossed suddenly. Therefore, the appellant/Insurance company is liable to pay. Further, the Tribunal determined the compensation at Rs.1,00,000/- based on the personal accident policy claim with interest 7.5% with costs. The appellant/Insurance company has challenged the award contended that a tort feasor is not entitled to maintain claim petition under Section 166 of the Motor Vehicle Act and the same is liable to be dismissed as not maintainable.

8. Learned counsel for the first respondent further contended that the Tribunal has only considered the claim under Section 163A and not under Section 166 and the appellant/Insurance company has not challenged the invoking of section 163A. Moreover, the appellant has not questioned the accident or the finding of the Tribunal that the accident had been taken place due to the negligence act of the claimant and only questioned the jurisdiction to make a claim under Section 166. Section 163 A has overriding effect on all other provisions of the Motor Vehicles Act and any provision which is in conflict with Section 163A will negate the mandate under Section 163A to the Act as held in 2012 2 SCC 356 and 163 A is founded under the Fault Liability Principle.

9. He further contended that the claimant/respondent has taken a personal accident insurance policy and paid premium of Rs.70/- for a sum of Rs.1,00,000/-. The insurance company is bound by the personal accident policy and the ***Hon'ble Apex Court in the case of National Insurance Company Limited Vs. Ashalata Bhowmik and others, reported in 2018 9 SCC 801,*** directed the insurance company to pay the indemnification amount of Rs.2,00,000/- with interest @ 9% based on the personal accident claim policy and in the instant case also, the Tribunal has granted a sum of Rs.1,00,000/- with interest. In Ex.P.9-personal accident insurance policy is for Rs.1,00,000/- and as per the terms, the insurance company is liable to pay the amount and it is admitted by the appellant/insurance company that the claimant had paid the insurance premium for the personal accident claim. The Motor Vehicles Act is a welfare legislation and the insurance companies cannot defeat that claim by hypertechnical pleas.

10. The learned counsel appearing for the first respondent has relied on the judgment of the Hon'ble Apex Court in the case of ***National Insurance***

Company Limited Vs. Ashalata Bhowmik and others reported in 2017 173 AIC 877. For better appreciation, the relevant paragraph is extracted hereunder:

> *"9. Therefore, the High Court was not justified in directing the appellant insurer to pay the compensation determined by the Tribunal. Since the indemnification extended to personal accident of the deceased is limited to Rs.2,00,000/- under the contract of insurance, the respondents are entitled for the said amount towards compensation. Hence, the appellant is directed to deposit the said sum of Rs.2,00,000/- with interest @9% p.a. from the date of the claim petition till the date of deposit with the Tribunal within a period of four weeks from today."*

11. Heard the learned counsel for the appellant/Insurance company and the learned counsel appearing for the first respondent and perused the materials available on record.

12. On perusal of the records, it is seen that the first respondent/claimant was riding his bike and bull chased by a boy suddenly crossed, in order to avoid hitting against the bull, the first respondent applied the break and in that process, the vehicle skidded and fell down and sustained

serious injuries over the left elbow, fracture of left leg. It is also not in dispute that the first respondent was admitted in the hospital and diagnosed the fracture of medial condyle (L) tibia and underwent surgery. He was in the hospital for one week.

13. The main contention of the appellant/Insurance company is that the accident had taken place out of the negligence of the respondents and not due to any third party and the insurance policy covers only the third party risk and not the owner and this contention is not acceptable to this Court for the reason that the claimant/respondent had taken a policy covering personal accident claim and paid a premium of Rs.70/- and the appellant/insurance company is liable to pay a sum of Rs.1,00,000/- covered under the personal accident insurance policy. It is pertinent to note that the insurance policy had been marked as Ex.P.9 and also as Ex.R.1 by the insurance company.

14. The insurance officer who has been examined as R.W.1 has also held in evidence that the insurance company is liable to pay the personal accident insurance of a sum of Rs.1,00,000/- on the basis of the payment of Rs.70/- towards premium by the respondent/claimant. This Court is of the

view that the accident had not been occurred due to the negligence on the part of the respondent/claimant for the reason that any prudent man is bound to apply sudden break to avoid collusion, if any animal or person suddenly crossed the road. The respondent/claimant has claimed a sum of Rs.5,00,000/- but the Tribunal has awarded only Rs.1,00,000/- along with 7.5% and the same is sustainable.

15. Learned counsel for the respondent/claimant relied on the judgment of the Apex Court, wherein the insurance company is directed to pay indemnification amount of Rs.2,00,000/- with interest at 9% based on the personal accident claims policy. In the instant case on hand, the Tribunal has granted Rs.1,00,000/- with 7.5 % interest does not warrant any interference by this Court and the same is hereby confirmed. Further, the award amount of Rs.1,00,000/- with 7.5% interest has already been deposited by the appellant/insurance company on 28.11.2014. Hence, this Court permits the claimant/respondent to withdraw the aforesaid amount with interest by filing appropriate application before the Tribunal.

16. In the result, this Civil Miscellaneous Appeal stands dismissed. No

costs. Consequently, connected miscellaneous petitions are closed.

07.02.2023

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Index : Yes/No
Speaking Order : Yes/No
Neutral Citation : Yes/No

To

1.The Motor Accidents Claims Tribunal,
III Additional District and Sessions Court,
Thirupathur.

2.The Section Officer,
VR Section, Madras High Court.

J.SATHYA NARAYANA PRASAD,J.

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C.M.A.No.3348 of 2014

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