IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.03.2023

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THE HON'BLE MRS.JUSTICE N.MALA

C.M.A.No.656 of 2021
and
CMP.No.4026 of 2020

M/s. Reliance General Insurance Co. Ltd.,
Branch Office, rep. by its Branch Manager,
At 2nd Floor, Door No.12, H2035,
15th Main Road, Anna Nagar West,
Chennai. … Appellant

vs.

R.Nataraj … Respondent

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 03.03.2020 made in M.C.O.P.No.49 of 2016 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate Court, Perambalur.

For Appellant : Mr.S.Arun Kumar

For Respondent : No appearance

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J U D G M E N T

The Insurance company has filed the above appeal against the Judgment and Decree dated 03.03.2020 made in M.C.O.P.No.49 of 2016 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate Court, Perambalur.

2.The appeal is filed questioning the liability of the insurance company to pay the compensation to the respondent/claimant.

3.The facts leading to the above appeal are as follows:

On 29.01.2015, at about 09.50 p.m. when the claimant was driving his Tata Sumo car, the driver of an unknown vehicle which was proceeding in front of the claimant's car, applied sudden brakes. In order to avoid the collusion with the said vehicle, the claimant turned his vehicle to the left and hit a Tamarind tree. Due to the impact, the claimant sustained grievous injuries and therefore filed the claim petition for a sum of Rs.25,00,000/- under Section 163 A and Section 140 of the Motor Vehicle Act before the Claims Tribunal.

4.The second respondent/Insurance Company filed a counter affidavit denying all the allegations raised in the claim petition and further submitted that as the claimant was the owner/driver of the Tata Sumo car he was not entitled to compensation under Section 163 A and 140 of the Motor Vehicle Act. The second respondent/Insurance Company further submitted that the petition filed under Section 163 A of the Motor Vehicle Act was not maintainable as the claimant, the owner/driver of the Tata Sumo Car could not be considered to be third party. On the aforesaid grounds, the second respondent/Insurance Company prayed for dismissal of the claim petition.

5.Before the Motor Accident Claims Tribunal, the claimant examined himself as PW1 and marked Ex.P1 to Ex.P13. The second respondent/Insurance Company examined two witnesses and marked one document. Ex.C1 Disability Certificate was marked as Court document.

6.The Tribunal on an assessment of the entire evidence on record both oral and documentary held that there was contributory negligence on the part of the claimant and therefore deducted 50% of the compensation amount towards the contributory negligence of the claimant. On the issue of liability, the Tribunal held that the second respondent/Insurance Company as the insurer of the Tata Sumo car was liable to pay 50% of the compensation. The Tribunal on the basis of the evidence on record fixed the compensation as Rs.4,70,000/- and after deducting 50% towards the contributory negligence of the claimant awarded Rs.2,35,000/- along with interest at the rate of 7.5% as compensation.

7.Aggrieved by the Judgment and Decree of the Claims Tribunal the second respondent/Insurance Company has filed the above appeal. Though notice was served to the first respondent/claimant, he has not appeared either in person or through his counsel.

8.The learned counsel appearing for the Insurance Company submitted that the appeal has been filed questioning the liability alone. According to the learned counsel, the Tribunal failed to note that the petition filed under Section 163-A of the Motor Vehicle Act was not maintainable at the instance of the owner/driver of the vehicle. He further submitted that no additional premium was paid by the owner covering risk to himself, therefore, the appellant/Insurance Company was not liable either statutorily or contractually to compensate the claimant. The Tribunal therefore erred in mulcting the liability on the Insurance Company.

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

10.The accident, negligence and the quantum of compensation are not disputed by the appellant. The only point agitated before this Hon'ble Court is the liability of the appellant Insurance Company to satisfy the award passed by the Tribunal. The policy covering the claimant's vehicle was marked as Ex.A1 and the certified copy of the same is perused. It is seen from the terms of the policy that no additional premium was paid by the Insurer/owner covering personal accident to himself as owner/driver. The Tribunal mulcted the liability on the Insurance Company on the basis that in the Policy a premium of Rs.500/- was collected for unknown passengers giving coverage of Rs.1,00,000/- per person. The Tribunal therefore directed the appellant/Insurance company to pay the compensation to the owner/driver under the above said coverage.

11.In my view, the Tribunal was not right in bringing the claimant under the said clause. It is trite in law that the policy of the Insurance is statutorily mandated to cover only the third party claims. Section 147 of the Motor Vehicle Act does not require the Insurance Company to assume risks to owner / driver for death or bodily injury. As far as the Personal Accident Coverage for the owner/driver is concerned and the coverage to passengers of a private car are concerned, the liability is contractual subject to the payment of additional premium.

12.In the present case, as seen from the policy it is clear that no additional premium was paid for personal accident coverage to the owner/driver. In the absence of a contract covering the Personal Accident Claim for the owner/driver, the Tribunal ought not to have fixed the liability on the Insurance Company.

13.It is further to be noted that the claim petition is not maintainable under Section 163-A of the Motor Vehicle Act, as the claimant was the owner/driver of the car, the Insured, and hence not a third party. To invoke Section 163-A of the Motor Vehicle Act, the person should be a third party. In the case of Oriental Insurance Company Vs. Rajni Devi reported in 2008 (5) SCC 736 it was held that Section 163-A cannot have any application to an accident in which the owner of the Motorcycle was himself involved. As the liability under Section 163-A was on the owner, he could not be both a claimant as well as the recipient.

14.The learned counsel for the appellant submits that they have already deposited the liability 50% of the award amount before the Tribunal and therefore seeks permission of this Court to withdraw the amount already deposited before the Claims Tribunal. The appellant is permitted to withdraw the amount already deposited.

15.In view of the above discussion, the appeal is allowed. The Award dated 03.03.2020 made in M.C.O.P.No.49 of 2016 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate Court, Perambalur is setaside. There shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

28.03.2023

Index : yes/no
Internet : yes/no
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To

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

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

N.MALA, J.

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