



CMA.No.838 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.11.2023

CORAM:

THE HON'BLE MR.JUSTICE **M.DHANDAPANI**

CMA.No.838 of 2020

and

CMP.No.5554 of 2020

M/s. Oriental Insurance Co. Ltd.,
Rep. By its Manager,
Third Party Claims Hub,
1st Floor, Vijayalakshmi Complex,
No.32/312, 13th Street, Phase-2,
Sathuvachari, Vellore – 9.

...Appellant

Vs.

Nagaraj

...Respondent

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree passed in MCOP.No.512 of 2014 dated 25.10.2018 on the file of the Motor Accidents Claims Tribunal, Special Subordinate Court, Tirupattur.

For Appellant : Mr.M.J.Vijayaragavan

For Respondent : Mr.V.Kumaravelan



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JUDGMENT

WEB COPY This Appeal has been filed challenging the judgment and decree passed in MCOP.No.512 of 2014 dated 25.10.2018 on the file of the Motor Accidents Claims Tribunal, Special Subordinate Court, Tirupattur.

2. The case of the appellant is that, the respondent filed a claim petition claiming compensation of Rs.5,00,000/- on the ground that, on 14.07.2014 at about 19 hours when the claimant and two others were travelling in a Bajaj Discover motorcycle bearing Regn.No.TN-23-BL-6345 insured with the appellant, an unknown car driven by its driver in a rash and negligent manner came and hit behind the above said motorcycle, as a result of which, the claimant sustained grievous injuries all over his body and got admitted in the hospital. Thereby, for the injuries sustained and the loss of earning sustained by him, the respondent filed a claim petition claiming compensation at the hands of the appellant. Before tribunal, the appellant examined one witness viz., R.W.1 and marked 2 documents viz., Ex.R1 and the examined himself as P.W.1 and marked 9 documents viz., Ex.P1 to P9. After contest, the tribunal, by impugned judgment awarded a compensation



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of Rs.99,900/-. Aggrieved by the said order, the appellant had preferred this appeal questioning the liability of the insurer.

3. Learned counsel for the appellant submitted that, the respondent is not a third party and he is the owner of the vehicle and thereby the claim made by the respondent against its own insurer is not sustainable. Further, the respondent had paid premium towards personal accident coverage and he is entitled to claim compensation only for specific injuries that is ***in the case of death or in the case of amputation injury***. In the case on hand, the accident occurred solely due to the rash and negligent driving of the respondent due to which, the respondent sustained only simple injuries and the respondent being the tort-feasor due to whose negligence the accident happened, for which, no claim is maintainable under section 166 of MV Act, that too as against its own insurer. Further the injuries sustained by the respondent is not covered under section 3 of policy. However without considering any of the said facts, the tribunal awarded a compensation of Rs.99,900/- which is erroneous and the same warrants interference of this court.



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4. Learned counsel appearing for the respondent submitted that the Tribunal has properly appreciated all the materials placed before it and has come to the finding that the claimant is entitled for compensation and awarded meagre compensation, which does not require any interference.

5. Heard learned counsel appearing on either side and perused the materials available on record.

6. A careful perusal of the order impugned herein reveals that the whole allegation of the claimant is that an unknown car had dashed his vehicle. Neither the car nor the insurer of the car are made party. The claimant claims compensation at the hands of its own insurer. The policy of contract between the appellant and the claimant is an Act Only Policy, which does not provide for coverage in respect of the owner. Further, it is the stand of the appellant that towards personal accident cover for the owner, only in the result of death or amputation, there is coverage. In the case on hand, amputation had not been done and the owner is the claimant.



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Such being the case, the claimant being not a third party and also does not have personal accident cover in respect of injuries suffered by him in the accident, the insurer of the vehicle of the claimant cannot be made liable to pay the compensation. However, the Tribunal has erroneously passed the order granting compensation, which is wholly misdirected and the same deserves to be set aside.

7. Accordingly, the appeal is allowed and the impugned award passed in MCOP.No.512 of 2014 is set aside. The appellant is permitted to withdraw the amount, if any, deposited by them to the credit of MCOP by filing appropriate application before the Tribunal. No costs. Consequently, the connected Miscellaneous petition is closed.

27.11.2023

skt

Index : Yes/No

Speaking order : Yes/No

NCC : Yes/No

Copy to:

1. The Motor Accidents Claims Tribunal, Special Subordinate Court, Tirupattur.

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

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M.DHANDAPANI., J.

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