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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 20.07.2023

RONOUNCED ON: 15.09.2023

THE HONOURABLE MR. JUSTICE K. RAJASEKAR

C.M.A. No. 3059 of 2017
and C.M.P. No.18559 of 2017

The United India Insurance Co. Ltd.,
Christo Building,
Bank Road,
Ooty - 643 001. ... Appellant / Respondent

Vs.

S. Sudeesh ... Respondent / Petitioner

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and decree dated 06.04.2017 passed in M.C.O.P. No.439 of 2016 on the file of the III Additional District and Sessions Judge, Motor Accident Claims Tribunal, Gobichettipalayam.

For Appellant : M/s. C. Paranthaman

For Respondent : M/s. Ma.P. Thangavel

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JUDGMENT

This Civil Miscellaneous appeal is filed by the insurance company challenging the judgment and award passed in M.C.O.P. No.439 of 2016, dated 06.04.2017 on the file of the III Additional District and Sessions Judge, Motor Accident Claims Tribunal, Gobichettipalayam, wherein the Tribunal has awarded a compensation for a sum of Rs.98,000/- along with interest @ 7.5 % per annum from the date of filing of petition till the date of realization to the claimant.

2. For the sake of convenience, the parties are referred herein according to their litigative status and rank before the Tribunal.

3. On 25.10.2015, at about 3:30 PM, the claimant was riding his motorcycle bearing Registration No.TN-43-E-7085 on Masinakudi to Pokkapuram road, while he reached near Dhotlini, a cow has suddenly crossed before him, which resulted in loosing control over his motorcycle and fell down on the road, thereby sustained injuries. A criminal case was registered against the claimant in Cr.No.208/2015 under section 279 and 337 of IPC on the file of Masinakudi Police station. The claimant herein is

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the owner cum driver of the motorcycle, which was insured with the respondent – insurance company and also extra premium of Rs.100/- was paid as personal accident cover owner cum driver of the motorcycle, hence for the injuries sustained in the occurrence, the claimant has come forward with claim petition seeking compensation for a sum of Rs.1,00,000/- along with interest @12% by invoking section 166 of the Motor Vehicles Act, 1988.

4. The respondent- insurance company has filed a counter and contended that the claimant himself is a tortfeasor, who has ridden the motorcycle in a rash and negligent manner and invited the occurrence and stated that the criminal case was also registered only against the claimant, hence, the insurance company is not liable to pay the compensation. The insurance company also disputed the age, income, avocation and injuries of the claimant and contended that the compensation claimed is also on the higher side, prayed to dismiss the claim petition.

5. Based on the evidence placed on record, the Tribunal has held that the claimant is entitled to get compensation from the respondent – insurance company, since the insurance policy covers the owner cum driver

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for a sum of Rs.1,00,000/-. The Tribunal also awarded compensation for a sum of Rs.98,000/- along with interest @ 7.5% per annum from the date of filing of petition till the date of realization.

6. Aggrieved over the award, the insurance company has filed this appeal.

7. The learned counsel appearing for the insurance company submitted that the Tribunal without appreciating the evidence placed on record has awarded compensation to the claimant for the injuries sustained by him, who is a tortfeasor himself, hence he could not claim compensation by invoking section 166 of the Motor Vehicles Act, for his own negligence, hence prays to set aside the award of the Tribunal.

8. The learned counsel for the claimant submitted that the claimant paid an extra premium of Rs.100/- towards personal accident cover to the owner cum driver of the motorcycle, accordingly, he is eligible to claim compensation to the maximum extent of Rs.1,00,000/-. Based on this and the medical expenses incurred by the claimant for the injuries sustained

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by him during the accident, the Tribunal has awarded compensation, hence prays to confirm the award.

9. I have considered the submissions made on both sides and perused the materials available on record.

10. The case of the claimant is that, he sustained injuries due to an untoward road accident that took place on 25.10.2015 and the accident has taken place without involvement of any third party vehicle, therefore, he is not entitled to claim compensation by invoking section 166 of the Motor Vehicles Act. However, in this case, there is a coverage policy of Rs.1,00,000/- for the owner of the motorcycle, which stands in the name of the claimant and he has also paid the necessary premium for the same.

11. On perusal of the award, the Tribunal has held that the respondent – insurance company could not able to prove that the claimant himself is a tortfeasor, the Exs.P.2- wound certificate, Exs.P.3 and P.4 – discharge summaries issued by the Ganga Hospital shows that the claimant has sustained grievous injuries in the accident and medical bills from

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KMCH Hospital marked as Exs.P.9 to P14 shows that the claimant has incurred a medical expenses of Rs.1,70,130/-. The claimant has also undergone in-patient treatment for a period of 21 days from 25.10.2015 to 04.11.2015 in Ganga hospital and another 17 days from 14.11.2015 to 30.11.2015 in KMCH hospital, however, as per the policy, the claimant is not entitled to claim more than Rs.1,00,000/-, even though, the claimant has spent Rs.1,70,130/- towards medical expenses, he is entitled not more than Rs.1,00,000/-, accordingly, the Tribunal has awarded Rs.98,000/- as compensation to the claimant, which is within the maximum permissible coverage limit.

12. The Single Judge of this Court in ***National Insurance Company Limited vs. Velmurugan [C.M.A. No.2201 of 2007, dated 18.12.2018]*** by relying on the judgment of this Court in ***Bajaj Allianz General Insurance Company Limited vs. C. Ramesh [2013 (1) TN MAC 325]***, has held that a Personal Accident Cover Policy should be extended to all kinds of injuries and that depending upon the nature of injuries, disablement, expenditures incurred under various heads, injured is entitled to make a claim for compensation. The relevant paragraph of the judgment is incorporated hereunder for better appreciation:

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"When a owner cum driver takes a personal accident cover, an optional contract of insurance and makes an additional premium, he is entitled to claim compensation, as per the terms and conditions of the policy and such compensation shall be payable directly to the insured or to his/her legal representatives, as the case may be, whose receipt shall be the full discharge in respect of the injury to the insured. However, 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; and (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."

....

106. The contention that the Insurance Company need not pay any compensation to any grievous injury or permanent disablment, arising out of the injuries, except for items 1 to 4, specified in the Personal Accident Cover Policy, cannot 'be accepted, as the contract of insurance, viz., Personal Accident cover Policy for the owner-cum-driver, is also a Motor Transport Policy, under IMT-15, recognised by the Motor Tariff Committee. As stated supra, when the policies issued under the insurance Act are recognised by the committee, subject to the regulations and instructions, issued by the committee, it is not open to the Insurance Companies to disown their liability to pay compensation in respect of other bodily injuries, wherein, scales of compensation are not specifically provided. There is no negative covenant in the policy, that no compensation would be paid, in respect of other bodily injuries. It is well settled

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that the Motor Vehicles Act is a beneficial legislation. Reference can be made to a decision of the Apex Court in Rita Devi v. New India Assurance Company Ltd. (2000) 5 SCC 113 : AIR 2000 SC 1930, wherein, in construing the provisions of the Act, the Supreme Court held that it is to advance the beneficial purpose underlying the enactment in preference to a construction, which tends to deviate the purpose.

*107. In **Shivaji Dayamu Patil v. Vatchala Utham More, 1991 ACJ 177**, the Apex Court reiterated that in the matter of interpretation of the Beneficial legislation, the approach of the Courts should be to advance the beneficent purpose.*

*108. At Paragraph 56 of the judgment in **Deepal Girishbhai Soni v. United India Insurance Company Ltd., (2004) 5 SCC 385**, the Supreme Court held that,-*

> *"It is now well - settled that for the purpose of interpretation of statute, same is to be read in its entirety. The purport and object of the Act must be given its full effect. [See High Court of Gujarat v. Gujarat Kishan Mazdoor Panchayat, (2003) 4 SCC 712 : JT 2003 (3) SC 50; Indian Handicrafts Emporium v. Union of India, (2003) 7 SCC 589; Ameer Trading Corporation Ltd. v. Shapoorji Data Processing Ltd., (2004) 1 SCC 702 : JT 2003 (9) SC 109 : 2003 (9) SCALE 713; and Ashok Leyland v. State of Tamil Nadu, (2004) 3 SCC 1 : 2004 (1) SCALE 224. The object underlying the statute is required to be given effect to by applying the*

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Principles of Purposive Construction"

> *109. Such a narrow construction of the terms of the policy, proposed by the Insurance Company, would run contrary to the purpose of the beneficial legislation. For the above said reasons, this Court is not inclined to deny the benefit of Personal Accident Cover to the Respondent/claimant, who is the owner-cum-driver of the vehicle involved in the accident. In the case on hand, according to the Respondent, on 31.10.2005, when he was riding his Motorcycle, bearing Registration No. TN-40-Y-4883, on Bhavani Sagar to Puliyampatti Road, near Thoppampalayam, due to heavy rain, there was stagnation of water in the middle of the road, and though he was riding his Motorcycle, at a moderate speed, while applying the brakes, the vehicle skidded, he fell down, along with pillion and sustained injuries. When the Claims Tribunal has specifically found that there was no negligence or wilful neglect o want of care on the part of the Respondent/Claimant, om the accident, he cannot be said to be a tort-feasor. The judgments relied on, by the learned counsel for the Insurance Company would not lend any support to the contentions of the Company.*

13. Since, this Court elaborately dealt with all the previous judgments as stated supra and consistently permitting the compensation to be paid to the owner of the vehicle for the injuries sustained by him under Personal Accident Cover policy. This Court finds no infirmity in the above finding of the Tribunal and the same is hereby confirmed.

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14. In the result, this Civil Miscellaneous Appeal is dismissed and the award of the Tribunal is hereby confirmed. Consequently, connected civil miscellaneous petition stands closed. No cost.

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

To:

1. The III Additional District and Sessions Judge,
   Motor Accidents Claims Tribunal,
   Gobichettypalayam.

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

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K. RAJASEKAR, J.

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