



C.M.A.No.807 of 2021

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.12.2023

CORAM :

THE HONOURABLE MR. JUSTICE M. DHANDAPANI

C.M.A.No.807 of 2021

and

C.M.P.No.4745 of 2021

National Insurance Company Limited,
Represented by its Branch Manager,
Branch Officer,
Bangalore Road,
Opposite to Raja Theatre,
Anuradha Complex, 3rd Floor,
Krishnagiri – 635 001.

... Appellant/Respondent

Vs.

R.Subramani

... Respondent/Petitioner

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgement and decree passed in MACT.O.P.No.124 of 2017 dated 03.10.2018 on the file of the Motor Accidents Claims Tribunal, Subordinate Court, Krishnagiri.

For Appellant : Ms.N.B.Sureka

For Respondent : No appearance



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JUDGEMENT

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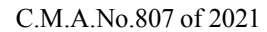
The appeal is filed by the Insurance Company being aggrieved by the liability fixed on the Insurance Company to pay the owner of the vehicle, the compensation of Rs.2,00,000/- for fracture of both bone left leg sustained by the claimant in the road accident.

2. As per the claim petition, on 23.12.2016, the petitioner who was the owner cum driver of the auto bearing Reg.No.TN-24-J-0304 proceeded in the same from Rayakottai to go to his native. On that day, at about 18.30 hrs, near MGR Nagar, at that time a dog all of sudden started to cross the road. On seeing this, the driver of the auto, i.e., the petitioner applied sudden brake and thus, the said auto capsized on road side, thereby the petitioner sustained multiple grievous injuries. Immediately, after the accident, he was taken to Government Hospital, Krishnagiri and then taken to Maruthi Nursing Home, Krishnagiri and admitted there as inpatient from 24.12.2016 to 28.12.2016. The accident occurred only due to the sudden crossing of the dog. Thereafter, the petitioner had filed a petition claiming a total compensation of a sum of Rs.20,00,000/- under various heads.



3. Before the Tribunal, the petitioner had examined himself as P.W.1 and marked eight documents viz., Ex.P1 to Ex.P.8. On the side of the respondent, they examined two witnesses viz., R.W.1 and R.W.2 and marked one document viz., Ex.R.1. The Tribunal has marked the disability certificate issued by the Medical Board as Ex.C.1. After adjudication, the Tribunal awarded a sum of Rs.2,00,000/-.

4. The learned counsel appearing for the appellant submitted that the Insurance Company is not liable to pay the claimant for the alleged injury sustained in the accident. The liability of the Insurance Company is only limited to owner as per the policy terms and conditions. As per the policy coverage, the Personal Accident cover upto Rs.2,00,000/- is only in case of death or injury which are mentioned in the schedule. The nature of injury sustained by the claimant does not fall within the injury mentioned in Section 3 of the policy. Therefore, the Insurance Company is not liable to pay any compensation. However, the Tribunal erred in passing an award a sum of Rs.2,00,000/- in favour of the claimant, which is not sustainable. Accordingly, he prays for allowing the appeal.



6. On perusing the entire records, this Court finds that there is a force in the submission of the learned counsel for the appellant. The Insurance Policy is marked as Ex.P.4. As per the policy, the owner of the vehicle who is the claimant in this case paid a sum of Rs.5,311/- as premium. It includes Rs.100/- paid for Personal Accident cover. Section 3C of the insurance terms and conditions reads as below :

The Company undertakes to pay compensation as per the following scale for bodily injury/death sustained by the owner-driver of the vehicle, in direct connection with the vehicle insured or while driving or mounting into/dismounting from the vehicle insured or whilst travelling in it as a co-driver, caused by violent accidental external and visible means which independent of any other cause within six calendar months of such injury result in:

<i>Nature of injury</i>	<i>Scale of compensation</i>
(i) Death	100%
(ii) Loss of two limbs or sight of two eyes or one limb and sight of one eye	100%
(iii) Loss of one limb or sight of one eye	50%
(iv) Permanent fatal disablement from injuries other than named above	100%



c) such compensation shall be payable directly to the insured or to his/her legal representatives who receipt shall be the full discharge in respect of the injury to the insured.”

7. The disability certificate is marked as Ex.P.4. The injuries sustained by the claimant are mentioned as below :

1. Fracture both bone left leg
2. Lacerated injury over left lower leg
3. Swelling in the left leg
4. Aberration over left back side of the body

8. The claimant as insured is entitled to get compensation only if the injury falls under any of the injury mentioned in the contract. Since the injury sustained by the claimant does not fall within the scope of P.A. cover, the award of the Tribunal treating the claimant as third party is erroneous and liable to be set aside. Accordingly, the appeal is allowed and the award of the Tribunal is set aside. The appellant Insurance Company is not liable to pay any compensation to the insured/owner of the vehicle, since the injury sustained by him does not fall within the category of the injury mentioned under P.A. cover of the contract. As a result, if any amount deposited by the Insurance Company, the Insurance Company is permitted to withdraw the same.



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sp

9. In the result, the award of the Tribunal is set aside and the Civil Miscellaneous Appeal is allowed. No costs. Consequently, the connected miscellaneous petition is closed.

15.12.2023

($\frac{1}{2}$)

Index : Yes / No

Speaking order / Non-speaking order

Neutral Citation Case : Yes / No

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To

1.The Motor Accidents Claims Tribunal,
Subordinate Court,
Krishnagiri.

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

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C.M.P.No.7056 of 2023

in

C.M.A.No.807 of 2021

M.DHANDAPANI, J.

In view of the judgment passed in the civil miscellaneous appeal, this Court is of the view that no order is necessary in this civil miscellaneous petition. Accordingly, the civil miscellaneous petition is closed.

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15.12.2023

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