IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.10.2023

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.No.3773 of 2019
and
C.M.P.No.21694 of 2019

The Oriental Insurance Company Limited,
No.54, R.K.V.Building,
Dhali Road,
Udumalpet. ... Appellant / 2nd Respondent

Vs.

1. Dhanalakshmi,
   W/o.N.Ravikumar ... 1st Respondent / petitioner

2. K.Thirumalaisamy
   S/o.Krishnasamy ... 2nd Respondent / 1st Respondent

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 07.06.2013 made in M.C.O.P.No.379 of 2012 on the file of the Motor Accidents Claims Tribunal, Special Subordinate Judge, Coimbatore.

For Appellant : Mr.M.J.Vijayaraghavan

For Respondents : Mr.K.Suresh for R1
No appearance for R2

J U D G M E N T

Aggrieved by the compensation awarded by the Tribunal in M.C.O.P.No.379 of 2012 filed by the claimant, the Insurance Company has come before this Court challenging the same by filing the present civil miscellaneous appeal.

2. The first respondent, Dhanalakshmi, aged about 36 years, alleged to be earning a sum of Rs.15,000/- per month, met with an accident on 17.04.2004 when she was travelling with her daughter in a Maruthi Car bearing Registration No.TN-45-K-4050, the driver of the said car, i.e., the second respondent herein drove the car in a rash and negligent manner and hit one Pandiammal and Alagammal and dashed into the tree in which the said Pandiammal died and the first respondent is alleged to have suffered injuries for which she was admitted in the hospital and due to the loss

suffered on the accident, the claimant, claiming compensation for the injuries suffered and also for loss of income, has filed the claim petition. The said claim was resisted by the Insurance Company / appellant.

3. The claimant had filed the claim petition claiming compensation of a sum of Rs.12,00,000/-. Before the Tribunal, on the side of the claimant, P.W.1 and P.W.2 were examined and Exs.P1 to P14 were marked. On the side of the respondents, R.W.1 was examined and Ex.R1 was marked and the Tribunal, considering the oral and documentary evidence, adduced by the claimant and the Insurance Company, awarded a sum of Rs.4,82,900/- as compensation.

4. The appellant / Insurance Company objected that the manner of the accident and the claims made under various heads are highly excessive. The Insurance Company also contended that the first respondent / petitioner has not sustained grievous injuries and permanent disability and that the second respondent was not having any valid driving license to drive the car

at the time of the accident. The interest claimed by the first respondent / petitioner is highly excessive and exorbitant. Hence, the claim petition is liable to be dismissed.

5. The learned counsel appearing for the appellant / Insurance Company submitted that the Tribunal had erred in fastening the liability on the appellant insurer in a case where the first respondent / petitioner was owner of the car bearing Registration No.TN-45-K-4050 and not entitled for coverage. Further, the first respondent / petitioner as occupant in the car was not entitled for coverage / compensation as she was insured under the contract of insurance herself. Further, the learned counsel for the appellant relied upon the Judgment of this Court in the case of ***Royal Sundaram Allianz Insurance Company Limited vs. Somu*** reported in ***2020 (1) TN MAC 547*** in support of his contentions. Hence, the award of the Tribunal is unsustainable and liable to be interfered with.

6. The learned counsel appearing for the first respondent submitted that the first respondent suffers loss of earning for the permanent disability due to the accident. He further stated that, she is aged about 36 years, running Beauty Parlor and earned a sum of Rs.15,000/- per month. The Tribunal had rightly come to the conclusion that the disability suffered by her was permanent in nature and that the amount awarded by the Tribunal is sustainable, which does not require any interference.

7. There is no representation on behalf of the second respondent.

8 This Court gave its careful consideration to the submissions advanced by the learned counsel appearing on either side and perused the materials available on record.

9. It is seen from the records that the first respondent is the owner of the vehicle involved in the accident and the said vehicle was covered under Personal Accident Coverage Policy. As per the Judgment of this Court

in ***Royal Sundaram Allianz Insurance Company*** (*supra),* if the vehicle is covered under the Personal Accident Coverage Policy for Owner / Driver, the insurer undertakes to pay compensation to an extent of 100% of Capital Sum Insured i.e. Rs.2,00,000/-. In the instant case, the vehicle involved in the accident is covered under the Personal Accident Coverage Policy for Owner / Driver and thus, the appellant is liable to pay Rs.2,00,000/- only as compensation.

10. In fine, this Court is of the considered view that the terms and conditions stipulated in the policy has not been considered by the Tribunal. Accordingly, this appeal is partly allowed and the award dated 07.06.2013 made in M.C.O.P.No.379 of 2012 is modified to the extent that the first respondent / petitioner is entitled for Rs.2,00,000/- (Rupees Two Lakhs only) as compensation together with interest @ 7.5% per annum from the date of filing of claim petition till the date of deposit. In case, the award amount has already been deposited by the appellant / Insurance Company to the credit of M.C.O.P.No.379 of 2012, the amount in excess of the award

modified now, i.e., Rs.2,00,000/- shall be withdrawn by the appellant / Insurance Company by filing proper application. After the Insurance Company withdrawn the excess award amount if any deposited before the Tribunal, the first respondent / petitioner shall withdraw the amount now awarded by this Court. No costs. Consequently, connected miscellaneous petition is closed.

03.10.2023

NCC : Yes / No
Index : Yes / No
Speaking Order : Yes / No

vji

To

1. The Motor Accidents Claims Tribunal,
   Special Subordinate Judge,
   Coimbatore.

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

M.DHANDAPANI, J.

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