IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:11.04.2023

CORAM:

The HONOURABLE MRS.JUSTICE N.MALA

C.M.A.No.189 of 2020

TATA AIG General Insurance Company Limited
Mumbai 400 013. ... Appellant

Vs.

C.Ramanathan ... Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 05.07.2017 made in M.C.O.P.No.715 of 2014 on the file of the Motor Accident Claims Tribunal, Special Sub Court, Dharmapuri.

For Appellant : Mr.k.Vinod

For respondent : Mr.V.Kumaravelan

JUDGMENT

The appeal is filed by the insurance company challenging the judgment and decree dated 05.07.2017 made in M.C.O.P.No.715 of 2014 on the file of the MACT, Special Sub Court, Dharmapuri.

2. The Insurance Company has filed the above appeal challenging its liability to pay the compensation to the claimant. The appeal arises

out of the Motor accident which occurred on 05.04.2023. On 05.04.2023 when the claimant was riding his motor cycle from Karimangalam to Morappur Road, the Driver of Bajaj Pulsar motor cycle, came in a rash and negligent manner and hit against the claimant's motor cycle causing him injuries. The claimant was initially taken to Government Medical College Hospital, Dharmapuri and later he was admitted to Ganga Medical Centre & Hospitals (Pvt.) Ltd., Coimbatore for his treatment.

3. According to the claimant, he was an agriculturist and was earning a sum of Rs.7,000/- per month. The Claimant therefore filed the claim petition seeking a sum of Rs.7,00,000/- as compensation for the injuries sustained by him in the accident.

4. The appellant insurance company filed the counter denying all the averments in the claim petition. The Insurance Company pleaded that it was not liable to pay the compensation to the claimant because he was the owner of the two wheeler and a claim for personal accident was not maintainable before the Motor Accident Claims Tribunal. In effect the insurance company contented that as the claimant was not a third party the claim petition was not maintainable. The insurance company further

pleaded that the claim petition was also not maintainable for non joinder of necessary party i.e., rider and owner of the motor cycle bearing Registration No.KA-03-HE-1361, the tort feasors.

5. Before the Claims Tribunal, the claimant examined himself as P.W.1 and examined the Doctor as P.W.2 and Exs.P.1 to P.10 were marked in support of the claim petition. The respondent on the other hand examined R.W.1 and marked Ex.R.1.

6. The Tribunal on assessment of oral and documentary evidence on record found that the accident occurred only due to negligence of the rider of the two wheeler bearing Registration No. KA 03 HE 1361, which hit the claimants two wheeler. The Tribunal held that as the claim petition was filed under Section 163-A of Motor Vehicle Act and as there was PA cover under the policy the appellant insurance company was liable to pay the compensation. On the quantum of compensation, the Tribunal assessed compensation at Rs.2,17,300/- along with interest at the rate of 7.5% per annum. Aggrieved by the judgment and decree of the Claims Tribunal, the appellant insurance company has filed the above appeal, challenging its liability to pay the compensation.

7. The first contention of the learned counsel for the appellant is that the claim petition filed under Section 163-A of the Motor Vehicle Act is not maintainable, as even according to the Tribunal the negligence of the rider of the two wheeler bearing Registration No. KA 03 HE 1361 resulted in the accident and further the owner and insurer of the offending vehicle were not impleaded. The learned counsel further submitted that the claims Tribunal had no jurisdiction to grant compensation under PA cover of the policy. The learned counsel relied on the judgment of this Court in ***Branch Manger, Oriental Insurance Company vs. Poongavanam***, reported in 2021 (1) TNMAC 600 in support of the said submission. According to the learned counsel, the injuries suffered by the claimant were partial permanent in nature and were assessed at 35% by the Doctor. The learned counsel submitted that in the policy, Ex.R.1, the coverage was limited to death and permanent disablement arising out of the injuries and therefore the claimant was not entitled to any compensation for the injuries suffered by him. In support of the said submission the learned counsel relied on the judgment of this Court in ***Cholamandalam MS General Ins. Co. Ltd Vs. Ramesh Babu***, reported in 2021 ACJ 979.

8. The learned counsel for the respondent on the other hand submitted that if for any reason, this Court should conclude that the claimant was not entitled to compensation under Section 163 A of Motor Vehicles Act and in terms of the policy, the case may be remitted to the Tribunal, affording an opportunity to the claimant to file a petition under Section 166 of Motor Vehicle Act and also permitting the claimant to implead the owner and insurer of the offending vehicle.

9. I have heard both the learned counsels and I have perused the materials placed on record.

10. The accident as such is not disputed. The Tribunal has returned a finding of negligence against the Driver of the Vehicle bearing Registration No.KA-03-HE-1361.

11. The learned counsel for the respondent submitted that the claims Tribunal having found negligence against the Driver of vehicle bearing Registration No.KA-03-HE-1361 should have given an opportunity to the claimant to amend the claim petition and implead the

tort feasor and the insurer. The learned counsel submitted that this Court should remand the case giving opportunity to the respondent to implead the tort feasor and the insurer. More than 12 years have lapsed since the accident, and so I am of the view that no purpose would be served in remitting the case to the Tribunal more so, when the availability of the records is itself doubtful. Therefore the submission of the learned counsel to remand the case is rejected.

12. The claimant in the present case is the owner of the vehicle and as such not a third party. It is true that under Section 163-A, negligence need not be proved. But to maintain a claim under Section 163-A, the claimant should be a third party. In my view the petition filed under Section 163 A of Motor Vehicles Act is not maintainable as the claimant cannot claim against himself.

13. The learned counsel for the Insurance Company relied on the judgment of this Court in ***Branch Manager, Oriental Insurance Company vs. Poongavanam,*** reported in 2021 (1) TNMAC 600 and ***Cholamandalam MS General Insurance Company Ltd., vs. Ramesh Babu,*** reported in 2020 ACJ 979 in support of his submission, that the

claims Tribunal erred in awarding compensation to the claimant under PA cover of the policy. The relevant portion of the judgment is as follows:

> ***"7.*** *This Court is of the considered opinion that the personal accident individual policy marked as Ex.R2 is a stand alone policy and admittedly, not under the Motor Vehicles Act. The Motor Vehicles Act being a special legislation and the Motor Accident Claims Tribunal is constituted to deal with the accident claims, specifically and only under the provisions of the Motor Vehicles Act, the said Tribunal cannot have jurisdiction to deal with the other policies issued by the Insurance companies and in such an event, the policy holder is entitled to claim benefit under the stand alone policy by approaching the appropriate forum.*
>
> ***8.*** *It is relevant to consider that the Motor Vehicles policies are issued by the Insurance companies for the purpose of grant of compensation i.e., the language employed is "compensation". However, in the personal accident policy, it is clearly stated that the "benefit" is to be granted. Thus, the word compensation adopted under the Motor Vehicle Policies cannot be equated with the "benefits" to be granted under the personal accidents policy, which is independent and unconnected with the provisions of the Motor Vehicles Act as well as the*

compensation to be granted under the Motor VehicleAct. This being the basic difference in respect of the personal accident policy, the Tribunal cannot have any jurisdiction, so as to adjudicate the issues with reference to such stand alone policies and if such a power is granted, then the scope of the powers conferred on the Tribunal is exceeded and therefore, this Court is of the considered opinion that the Tribunal has erroneously exercised its jurisdiction, so as to grant the benefit under the personal accident policy."

The same view is reiterated in ***Cholamandalam MS General Insurance Company Ltd., vs. Ramesh Babu,*** and is covered by paras 10 and 11 of the said judgment which reads as follows:

"*10. The judgments relied on before the Claims Tribunal may not have relevance with reference to the facts and circumstances in the present case on hand and this apart, the powers conferred on the Motor Accidents Claims Tribunal has not been elaborately adjudicated by the Courts in that judgment. When there is a provision to entertain a Claim Petition in respect of the Policies, under the Motor Vehicles Act, then the other Polices, which all are unconnected with the Act, cannot be entertained by the Motor Accident Claims Tribunal and the beneficiary of such Polices are bound to approach the competent Forum for the purpose of getting the benefit.*

11. This being the factum established, this Court is of the considered opinion that the Tribunal has committed an error in exercise of its jurisdiction and entertained the Claim Petition in violation of the provisions of the Motor Vehicles Act. It is an admitted fact that the Tribunal granted Compensation based on the Personal Accident Policy, which cannot be granted."

Hence, I am of the view that Tribunal erred in awarding compensation under Personal Accident cover of the policy.

14. Assuming for a moment that the claims Tribunal could have entertained the claim petition, it is to be seen if the injuries sustained by the claimant are covered by the terms of the policy.

Accident Cover for Owner-Driver-reads as under:

"Section IV-Personal Accident Cover for Owner-Driver.
Subject otherwise to the terms, exceptions, conditions and limitations of this policy, 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 whilst mounting into/dismounting from or travelling in the insured vehicle as a co-driver, caused by violent,

accidental, external and visible means which independent of any other cause shall within six calender months of such injury result in:

Details of injury	*Scale of compensation*
(i)Death	*100 per cent of CSI*
(ii)Loss of two limbs or sight of two eyes or one limb and sight of one eye	*100 per cent of CSI*
(iii)Loss of one limb or sight of one eye	*50 per cent of CSI*
(iv) permanent total disablement from injuries other than named above	*100 per cent of CSI*

In the present case as already stated the claimant has sustained fracture and other injuries which were assessed as partial permanent disability at 35%. Hence the injuries sustained by the claimant are not covered by the policy and as such the claimant will not be entitled to any compensation. Useful reference can be made in this regard to paras 39 and 40 of the judgment in ***Cholamandalam MS General Insurance Company vs. Ramesh Babu***, reported in 2021 ACJ 979

"39**.** *In the present case, the Personal Accident Coverage Policy has been agreed between the* *appellant/Insurance company as well as the respondent. Rs. 2,00,000/- is fixed under the Personal Accident Coverage Policy. The Tribunal has granted a sum of Rs. 2,16,500/- towards compensation. The Tribunal has not adjudicated the maintainability of the Claim Petition by looking into the terms and conditions stipulated in the Insurance Policy. With reference to the nature of injuries, there must be an adjudication strictly with reference to the Personal Accident Coverage Policy. Suffering an injury is one aspect. The Coverage provided under the terms and conditions of the policy is also important, so as to decide the entitlement of compensation.*

40. *For instance, the Personal Accident Coverage Policy states that the compensations are payable under 4(a), which is stated in Section IV of Personal Accident Cover for owner-cum-driver. Therefore, if the injuries are within the scope of the agreement, then alone, the person covered under the Personal Accident Cover is entitled to get compensation. Even otherwise, the said entitlement cannot be adjudicated by the Motor Accident Claims Tribunal as the terms and conditions are contractual in nature and not statutory in character. Only the statutory liability are amenable to the jurisdiction of the Motor Accident Claims Tribunal and not the contractual liability. All such contractual liabilities are falling within the scope of the Indian Contract Act and the aggrieved persons to the* *contract can approach the competent Court of Law and not the Motor Accident Claims Tribunal under the Motor vehicles Act."*

15. In the light of above discussions, I am of view that the claimant is not entitled for compensation even under personal accident cover as the terms of the policy do not cover the injuries sustained by the claimant.

16. The appeal is therefore allowed. The award and decree of the claims Tribunal is set aside. The learned counsel for the appellant insurance company submits that the entire amount was deposited before the Tribunal. Hence the appellant insurance company is permitted to withdraw the said amount along with accrued interest, if any. No costs.

11.04.2023

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Index : Yes/No
Internet:Yes/No
Neutral Citation : Yes/No

To:

1. The Motor Accidents Claims Tribunal
Special Sub Court, Dharmapuri.

N.MALA, J.

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