BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **24.03.2023**

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THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.969 of 2017
and
C.M.P(MD)No.10144 of 2017

National Insurance Company Limited,
Represented through its Branch Manager,
Swamy Nellaiyappar High Road,
Tirunelveli-1, Tirunelveli District.

... Appellant/Respondent

Vs.

Kovil Durai ... Respondent/Petitioner

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, to set aside the judgment and decree of the Claims Tribunal in M.C.O.P.No.52 of 2014, dated 19.06.2015 on the file of the Motor Accident Claims Tribunal, Subordinate Court, Sankarankovil.

For Appellant : Mr.J.S.Murali

For Respondent : Mr.J.C.Rathnavel Pandian

JUDGEMENT

The present appeal has been filed by the insurance company challenging an award passed by the tribunal in M.C.O.P.No.52 of 2014.

2. According to the injured claimant, when he was driving his vehicle on 09.07.2011, one Sudalaimani who was walking in a drunken mood was about to fall across the vehicle and therefore, he had suddenly stopped the vehicle, in which the claimant had sustained injuries. The claimant had claimed a sum of Rs.25,00,000/- towards compensation from his insurance company.

3. The insurance company has filed a counter contending that the claimant is not a third party to the contract and hence, he is not eligible to receive any compensation from the insurance company. Further, the claimant himself is a tortfeaser and solely responsible for the said accident. He has further contended that the injured claimant was not having effective driving license during the material point of time.

4. The tribunal after considering the oral and documentary evidence arrived at a finding that the claim petition has been filed under

Section 163-A of the Motor Vehicles Act and arrived at a finding that the claimant got injured only in a road accident. The tribunal further relied upon the personal accident coverage in the said insurance policy and proceeded to fix the liability upon the insurance company for payment of compensation. The tribunal ultimately awarded a sum of Rs.1,91,932/- towards compensation to the injured claimant. This award is under challenge in the present appeal.

5. According to the learned counsel appearing for the appellant, the injured claimant is the owner cum driver of the two wheeler and no other vehicle was involved in the said accident. Only due to the negligence on the part of the injured claimant, this accident had happened. Therefore, he is not entitled to receive any compensation from his own insurance company. The claimant, not being a third party, he cannot claim compensation from the insurance company. He further contended that the claimant was not having any valid and effective driving license on the date of the accident. Hence, he prayed for allowing the appeal.

6. Per contra, the learned counsel appearing for the respondent had contended that the claim petition has been filed under Section 163-A of

the Motor Vehicles Act. Therefore, there is no liability on the part of the claimant to establish negligence on the offending vehicle. Even if the claimant was negligent and he had caused the accident, he is entitled to receive compensation. He further contended that the medical expenses to a tune of about Rs.1,34,632/- have been spent by the claimant. The learned counsel for the respondent had relied upon a judgment of our High Court reported in ***2021 (1) TN MAC 429 Bajaj Allianz Insurance Co.Ltd Vs. Balaji)*** to contend that in case, where personal accident cover is there, the said personal accident cover would not only cover permanent disability, but also cover the medical expenses incurred by the injured claimant. He further contended that the company had called for the driving license of the petitioner and the same has been produced under Exhibit R.2. Therefore, he prayed that the award of the tribunal may be sustained.

7. I have carefully considered the submissions made on either side.

8. Admittedly, the injured claimant had driven his own vehicle and he has met with an accident. There is no involvement of any other vehicle. This application has been filed under Section 163-A of the Motor Vehicles Act. According to the learned counsel appearing for the appellant, Section 163-A cannot be invoked by the owner of the vehicle

as against their own insurance company. The Hon'ble Supreme Court in a judgment reported in ***2020 (2) SCC 550 (Ramkhiladi & Another Vs. United India Insurance Company & Another)*** has held that the owner or borrower of the vehicle or permissive users are not a third party in relation to their own vehicle and hence, they are not covered by the statutory insurance under Section 147 of Motor Vehicles Act. Since 163-A is based on no-fault liability principle, the victim need not plead or prove default of the driver or owner of the offending vehicle. Therefore, it is clear that the owner of the vehicle cannot invoke Section 163-A for making a claim.

9. A perusal of the insurance policy indicates that the insurance company has collected compulsory personal accident coverage for owner cum driver a sum of Rs.50. Therefore, the insurance company is at least liable to pay a sum of Rs.1,00,000/-. The learned counsel appearing for the respondent relying upon a judgment of our High Court in ***2021 (1) TN MAC 429 Bajaj Allianz Insurance Co.Ltd Vs. Balaji)***. Even if the loss of income and permanent disability are not accounted for, at least he would be entitled to get medical expenses incurred by him in view of the said judgment. However, the learned counsel appearing for the appellant had brought to the notice of the Court that in the counter, the insurance

company has taken a stand that the injured claimant was not having a valid driving license at the relevant point of time. The insurance company has called for a report from the Regional Transport Officer under Exhibit R.1 and the driving license of the injured claimant has been produced under Exhibit R.2. A perusal of Exhibit R.2 will clearly indicate that the appellant/injured claimant had taken driving license only on 06.08.2013 i.e., 2 years after the date of accident. Therefore, it is clear that on the date of accident, the claimant was not having valid and effective driving license to drive the vehicle. Since the claimant had driven the vehicle without a valid driving license and personal accident cover is covered by the terms of the contract, the claimant would not be entitled to invoke personal accident cover also under the present circumstances.

10. In view of the above said facts, the tribunal had erred in not considering the scope of Section 163-A of Motor Vehicles Act and has proceeded to pass the award. This Court is of the view that even under personal accident cover, the claimant would not be entitled to receive any amount in view of the violation of policy conditions. Therefore, viewed from any angle, the claimant would not be entitled to receive any compensation from his own insurance company.

11. In view of the above said facts, the award of the tribunal is set aside and the claim petition stands dismissed. The tribunal is directed to refund the entire award amount deposited by the insurance company along with accrued interest.

12. This Civil Miscellaneous Appeal stands allowed. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

24.03.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No

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To

1.The Motor Accident Claims Tribunal,
Subordinate Court,
Sankarankovil.

2.The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

R.VIJAYAKUMAR ,J.

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Judgment made in
C.M.A(MD)No.969 of 2017

24.03.2023