BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **26.04.2023**

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THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.473 of 2020

Cholamandalam MS.General Insurance Co., Ltd.,
through its Branch Manager,
Annai Plaza Compound,
1st Floor, No.5, Kovai Road,
Karur Post & District. ... Appellant/Respondent

Vs.

S.Ravichandran ... Respondent/Petitioner

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, to set aside the judgment and decree passed in M.C.O.P.No.17 of 2018 on the file of the Motor Accident Claims Tribunal (Additional District and Sessions Court), Theni at Periyakulam, dated 26.08.2019.

For Appellant : M/s.K.R.Shivashankari

For Respondent : Mr.C.Jawahar Ravindran

JUDGMENT

The present appeal has been filed by the insurance company challenging the award passed by the Motor Accident Claims Tribunal, Periyakulam in M.C.O.P.No.17 of 2018 primarily on the ground of liability.

2. The claimant who is the owner cum driver of an auto has sustained injuries due to his own rash and negligent driving. In the said accident, no other vehicle was involved and the claimant had prayed for a sum of Rs.15,00,000/- as compensation.

3. The insurance company has filed a counter contending that the owner of the auto rikshaw cannot claim any compensation from his own insurance company. Only if the owner becomes liable to pay the amount to a third party, the insurance company would indemnify the owner of the vehicle for such liability.

4. The tribunal after considering the oral and documentary evidence, arrived at a finding that the injured claimant being the owner cum driver of the vehicle, he is not entitled to claim any compensation

from his own insurance company treating himself as a third party. However, after going through the policy, the tribunal found that a sum of Rs.100/- has been paid for personal accident coverage. As per the said policy condition, a sum of Rs.2,00,000/- could be paid when the owner/driver had died and a sum of Rs.1,00,000/- can be paid when there is a permanent disablement. Based upon the said policy condition, the tribunal has awarded a sum of Rs.1,00,000/- to the claimant. This award is under challenge in the present appeal.

5. According to the learned counsel appearing for the appellant, the claimant cannot make any claim as against his own insurance company except under the personal accident coverage. Though premium has been paid for personal accident coverage by the owner of the vehicle, the said condition could be invoked only in the case of death or permanent disability. It would not cover any medical expenses incurred by the claimant. The learned counsel appearing for the appellant had relied upon a judgment of our High Court in ***C.M.A(MD)No.2434 of 2019,*** dated 02.09.2020 ***(M/s.The Cholamandalam MS General Insurance Company Limited Vs. Ramesh Babu)*** to impress upon the Court that since the personal accident coverage policy falling under the ambit of contractual liability, the aggrieved person has to approach the

competent Court of law and not the Motor Accident Claims Tribunal under Motor Vehicles Act. The learned counsel for the appellant had further contended that in the present case, none of the disabilities mentioned in the policy are stated to have been incurred by the claimant. Therefore, if the claimant would like to invoke personal accident coverage, he has to approach only the consumer forum and not the tribunal under the Motor Vehicle's Act. Hence, she prayed for allowing the appeal.

6. Per contra, the learned counsel appearing for the respondent/claimant 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 the nature of injuries and scale of compensation mentioned in the terms and conditions of the insurance policy are only illustrative in nature and they are not exhaustive. He further contended that as per the said judgment, there is no exclusion of medical expenses. Therefore, according to the claimant, he had incurred medical expenses to a tune of about Rs.92,877/- and 10% disability as per the certificate issued by the medical board. Therefore, according to the claimant, the quantum of Rs.1,00,000/- awarded by the tribunal may not be disturbed.

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

8. The main contention of the learned counsel appearing for the appellant is that the Motor Accident Claims Tribunal cannot adjudicate upon the claims made by the insured persons arising out of personal accident coverage. In the judgment reported in ***2020 (2) SCC 550 (Ramkhiladi & Another Vs. United India Insurance Company & Another)***, the Hon'ble Supreme Court while holding that an application under Section 163-A of Motor Vehicles Act is not maintainable at the instance of the owner/borrower of the vehicle, proceeded to award a compensation of Rs.1,00,000/- to the owner of the vehicle on the basis of the personal accident policy. Therefore, it is clear that even though the claimant approaches the tribunal under Section 166(1) of the Motor Vehicles Act, ultimately if the tribunal arrives at a finding that the claimant is not entitled to receive compensation under the said provision, the tribunal is empowered to award compensation relying upon the personal accident coverage in the same policy. Therefore, the contention of the learned counsel appearing for the appellant that the tribunal under the Motor Vehicles Act is not competent to adjudicate upon the personal accident coverage policy is not legally sustainable.

9. The learned counsel appearing for the appellant had further contended that even assuming that the personal accident coverage is applicable to the present case, the compensation amount could be paid only for the injuries sustained by the claimant that are enumerated under the terms and conditions of the policy. There is no mention about the medical expenses that were incurred by the claimant. When certain type of injuries are mentioned as a disability calling upon the coverage of the policy, naturally the claimant would have taken treatment for curing the said disabilities. Therefore, the medical expenses incurred for unsuccessfully treating the said disabilities cannot be said to be not covered under the personal accident coverage. Therefore, this Court is following the judgment reported in ***2021 (1) TN MAC 429 (Bajaj Allianz Insurance Co. Ltd., Vs. Balaji)*** wherein it is held that the medical expenses incurred by the claimant are not excluded under the personal accident policy, especially, when additional premium has been paid. In the present case, the claimant had filed medical bills before the tribunal under Exhibit P.4 and P.6 totalling, a sum of Rs.92,877/-. Apart from that, he has been referred to the medical board and the said board has issued a disability certificate pointing out the disability at 10%.

10. In view of the above said facts, I do not find the award of Rs.1,00,000/- by the tribunal under the personal accident coverage policy is either illegal or it is infirm. There are no merits in the appeal.

11. Hence, this Civil Miscellaneous Appeal stands dismissed. No costs.

26.04.2023

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

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To

1.The Motor Accident Claims Tribunal
(Additional District and Sessions Court),
Periyakulam
Theni.

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.473 of 2020

26.04.2023