IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.09.2024

CORAM:

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

CMA.No.1225 of 2024
and
C.M.P.No.10961 of 2024

The Regional Manager,
The United India Insurance Company,
No.35, AR Plaza, 45 Feet Road, Balaji Nagar,
Saram, Puducherry - 605 011. ...Appellant

.Vs.

1.Arumugam

2.Mummurthi ...Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Award dated 20.11.2023 in M.C.O.P.470 of 2022 on the file of the Motor Accidents Claims Tribunal, (Additional Motor Accidents Claims Tribunal) at Puducherry.

For Appellant : Mr.M.Krishnamoorthy

For R1 : Mr.R.Sreedhar

JUDGMENT

The appellant, the United India Insurance Company Limited is the second respondent in M.C.O.P.470 of 2022 on the file of the Motor Accident Claims Tribunal, (Additional Motor Accidents Claims Tribunal) at Puducherry. The first respondent filed the above said claim petition under Section 166 (1)(a) of the Motor Vehicles Act seeking compensation of Rs.30,00,000/- for the injuries sustained by him, in a road accident that took place on 22.07.2021.

2. The brief case of the claimant is as follows:

On 22.07.2021, the claimant was travelling as a pillion rider in his motorcycle bearing Registration Number PY-01-BF-7350 on Kumbakonam - Chennai Road near V.Agaram bus stop, Villupuram District. The second respondent drove the vehicle rashly and negligently, as a result of which, the motorcycle fell down in a pit and the claimant sustained grievous injuries. He was immediately rushed to PIMS Hospital, Ganapathichettikulam, where he was treated as an inpatient till 30.07.2021.

3. According to the claimant, the rash and negligent driving of the driver of the motorcycle was the cause of the accident and therefore, the Insurance Company with whom the claimant has insured the vehicle is liable to pay compensation to him.

4. In the Tribunal, the second respondent remained absent and was set *ex parte*. The appellant, the United India Insurance Company contested the claim petition on all the grounds available to the insurer under Section 170 of the Motor Vehicles Act.

5. The Tribunal after analysing the evidence on record, held that the claimant being the owner of the insured motorcycle cannot be treated as a third party irrespective of whether he was travelling as a passenger or a pillion rider. However, as the claimant had paid additional premium of Rs.275/- for Personal Accident Coverage to the tune of Rs.15,00,000/-, he can maintain the claim petition under Section 166 of the Motor Vehicles Act. Therefore, the Tribunal proceeded to compute the compensation amount and awarded a sum of Rs.3,46,000/- to the claimant and directed

the Insurance Company to pay the said amount to him together with interest at the rate of 7.5% per annum from the date of petition till the date of realization, vide its orders dated 20.11.2023.

6. Aggrieved over the same, the present appeal is filed by the appellant, Insurance Company.

7. Heard Mr.M.Krishnamoorthy, learned counsel for the appellant and Mr.R.Sreedhar, learned counsel for the first respondent.

8. Mr.M.Krishnamoorthy, learned counsel appearing for the appellant relied on the decision of the Division Bench of this Court in ***M/s.Tata AIG General Insurance Company Limited, Madurai vs. Shanmugam*** in ***C.M.A.No.1395 of 2021*** and contended that an owner / insurer cannot approach the Motor Accident Claims Tribunal by filing a claim petition for the injuries sustained by him in a road accident for getting the amount under Personal Accident Coverage. He therefore, prayed for setting aside the compensation awarded by the Tribunal.

9. *Per contra* Mr.R.Sreedhar, learned counsel for the claimant contended that the Tribunal had granted compensation of Rs.3,46,000/- since the owner had personal accident coverage to the tune of Rs.15,00,000/-. Therefore, he prayed for dismissing the present appeal.

10. In the decision in ***M/s.Tata AIG General Insurance Company Limited, Madurai vs. Shanmugam*** (cited supra) based on the reference made by a single judge of this Court the Division Bench had held as follows :

> *"25. The question before us is whether a claim petition can be filed before the Claims Tribunal under Section 163A by an owner/insured. Considering the language of Chapter XI and the decision in Ramkhiladi's case, the first question is answered against the claimant by observing that an owner/insurer cannot approach the Motor Accident Claims Tribunal by filing a claim petition under Section 163A of the Motor Vehicles Act, 1988 for the injuries sustained by him relying upon the personal accident cover. This does not prevent the owner of a vehicle, who has taken a personal accident cover, from claiming compensation from his insurer. However, the Claims Tribunal is not the Forum, before which he can make his claim, as he is not a Third Party. It is open to*

the owner of the vehicle to directly approach the insurer on the basis of the personal accident cover. In case, the Insurance Company fails to compensate him, it is well open to him to approach the Consumer Forum or any other appropriate Forum. In view of the answer to the first question as referred to us, the second question does not arise for consideration."

11. The claimant, the owner of the vehicle should have directly approached the Insurance Company on the basis of the personal accident cover. The Insurance Company, if, fails to compensate him, it is open to him to approach the consumer forum or any other appropriate forum. He cannot maintain a claim petition either under Section 163(A) or 166 of the Motor Vehicles Act seeking compensation for personal accident cover. Therefore, the present appeal stands allowed.

12. In the result,

i. The Civil Miscellaneous Appeal is allowed. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

ii. The decree and judgment dated 20.11.2023 in M.C.O.P.470 of 2022 on the file of the Motor Accidents Claims Tribunal, (Additional Motor Accidents Claims Tribunal) at Puducherry, is set aside.

iii. The appellant, Insurance Company is exonerated from paying the compensation amount and they are at liberty to withdraw the compensation amount, if already deposited by them.

02.09.2024

Index : Yes/No
Speaking / Non-speaking order
mtl

To

1. The Motor Accidents Claims Tribunal,
(Additional Motor Accidents Claims Tribunal) at Puducherry.

2. The Section Officer, VR Section, Madras High Court, Chennai.

R. HEMALATHA, J.

mtl

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