IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 22.12.2023

PRONOUNCED ON: 17.04.2024

THE HONOURABLE MR. JUSTICE K. RAJASEKAR

C.M.A. No. 2342 of 2021

and C.M.P. No. 13163 of 2021

M/s. IFFCO-TOKIO General Insurance Co. Ltd.,
No.28, North Usman Road,
Chennai. ... Appellant / 3rd Respondent

Vs.

1. Vijayakanth ... Respondent / Petitioner

2. Sivakumar
3. Sivakandan ... Respondents / Respondents 1& 2

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 to set aside the award and decree dated 11.11.2020 made in M.C.O.P. No. 304 of 2017 on the file of the Special Sub Judge, Motor Accident Claims Tribunal, Special Sub Court No.II, Villupuram.

For Appellant : Mr. S. Arunkumar

For R1 : Mr. M. Lokesh

For RR 2 and 3 : Notice Dispensed With

JUDGMENT

This Civil Miscellaneous Appeal has been filed by the Insurance Company challenging the liability fixed on them to pay compensation to the claimant / insurer as per the award made in M.C.O.P. No. 304 of 2017, dated 11.11.2020 on the file of the Special Sub Judge, Motor Accident Claims Tribunal, Special Sub Court No.II, Villupuram.

2. For the sake of convenience, the parties are referred herein according to their litigative status before the Tribunal.

3. On 01.02.2012, at about 6:30 AM, the claimant was riding his TVS Apache motorcycle bearing Registration No.TN-32-F-1229 from East to West in Villupuram - Pondy N.H along with two school going kids, while the claimant was crossing the Tamaraikulam Post Office, a TVS XL Super motorcycle belonging to the first respondent bearing Registration No.PY-01-AM-7234, driven by the second respondent in a rash and negligent manner, suddenly crossed the road and dashed against the claimant's vehicle, thereby causing grievous injuries. For the injuries sustained, the

claimant has come forward with claim petition seeking compensation for a sum of Rs.2,00,000/- by invoking Section 166 of the Motor Vehicles Act, 1988.

4. The first and second respondents have not contested the claim and remained ex-parte. The third respondent – insurance company, who is the insurer of the claimant's vehicle has filed counter and contended that the claimant and insurer are one and the same. Further contended that, since the claimant has categorically pleaded that the second respondent has rode the first respondent's motorcycle in a rash and negligent manner and caused the accident, the first and second respondent alone are liable to pay compensation to the claimant. This respondent being a insurer of the claimant's motorcycle is not liable to pay any compensation.

5. After due enquiry, the Tribunal has held that the F.I.R was registered against the claimant, hence awarded compensation for a sum of Rs.1,00,000/- by invoking Personal Accident Coverage and directed the insurance company to pay compensation to the insurer/ claimant.

6. Aggrieved over the award, the insurance company has filed this appeal challenging the liability fixed on them to pay compensation under Personal Accident Cover.

7. The learned counsel for the insurance company submitted that it is the specific case of the claimant that the second respondent is the tortfeasor, hence the first and second respondents alone are liable to pay compensation to the claimant but the Tribunal has not properly appreciated the evidence place on record and directed the insurance company to pay compensation by invoking Personal Accident Coverage. He further submitted that the injuries sustained is not Schedule injury to be compensated, as agreed in the insurance contract and the claimant has filed claim petition by invoking Section 166 of the Motor Vehicles Act, whereas the Section 166 is based on the fault liability, the claim petition is not maintainable.

8. Per contra, the learned counsel appearing for the claimant submitted that the Tribunal has rightly appreciated the evidence placed on record and held that the F.I.R was registered against the claimant herein,

hence instead of directing the first and second respondent to pay compensation, the Tribunal has directed the insurance company to pay compensation by invoking Personal Accident Coverage, hence prays to confirm the award of the Tribunal.

9. I have considered the submissions made on both sides and perused the materials available on record.

10. Admittedly, the claimant herein has come forward with the claim petition for the tortious act committed by the second respondent and also adduced evidence in support of his case. However, the Tribunal has considered the fact that the F.I.R was registered against the claimant, the criminal case was also closed on the ground of Limitation invoking Section 468 of Cr.P.C. The Tribunal has not specifically given any finding that the second respondent is the tortfeasor but it has not chosen to award compensation under Section 166 of the Motor Vehicles Act. The Tribunal has proceeded based on the Personal Accident Coverage and awarded compensation in terms of the insurance policy, and directed the Respondent No.3 to pay the same.

11. The Hon'ble Apex Court in ***New India Assurance Co. Ltd. vs. Prabha Devi and others [2013 (1) TN MAC 781 (SC)]***, has held that no compensation could be awarded to claimant when the claim petition is filed by the insurer / claimant against his own insurer in paragraph 9 as follows:

> *"**9 .** We have perused the judgment of this Court in the case of Dhanraj Supra. In that case, the Appellant who was the insurer was travelling in the insured vehicle, which met with an accident. In the accident, the Appellant as well as the other passengers received injuries. A number of claim petitions came to be filed. The Appellant who was the insurer also filed a claim petition. The MACT held the driver of the Jeep responsible for the accident. In all the claim petitions filed by the other passengers, MACT directed that the Appellant (the owner) as well as the driver and the Insurance Company were liable to pay compensation. Furthermore, in the claim petition filed by the Appellant, the MACT directed the driver and the Insurance Company to pay compensation to the Appellant. The aforesaid finding of the MACT was upheld by the High Court in the appeal filed by the Insurance Company. The Insurance Company was, in appeal before this Court challenging the judgment of the High Court awarding compensation to the owner of the insured vehicle. Taking into consideration the provision contained in Section 147 of the Act, this Court observed as follows:*
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> > ***8 .** Thus, an insurance policy covers the liability incurred by the insured in respect of death of or bodily injury to any person (including an owner of the goods or his authorised representative) carried in the vehicle or damage to any property of a third party caused by or arising out of the use of the vehicle. Section 147 does not require an insurance company to assume risk for death*

> *or bodily injury to the owner of the vehicle.*
>
> ***9 .*** *In the case of Oriental Insurance Co. Ltd. v. Sunita Rathi it has been held that the liability of an insurance company is only for the purpose of indemnifying the insured against liabilities incurred towards a third person or in respect of damages to property. Thus, where the insured i.e. an owner of the vehicle has no liability to a third party the insurance company has no liability also.*
>
> ***10.*** *In this case, it has not been shown that the policy covered any risk for injury to the owner himself. We are unable to accept the contention that the premium of Rs. 4989 paid under the heading "Own damage", the words "premium on vehicle and non-electrical accessories" appear. It is thus clear that this premium is towards damage to the vehicle and not for injury to the person of the owner. An owner of a vehicle can only claim provided a personal accident insurance has been taken out. In this case there is no such insurance."*

12. This Court in ***The Cholamandalam MS General Insurance Company Limited Vs. Ramesh Babu [2021 ACJ 979]*** has held that the claim petition filed under section 166 of the Motor Vehicles Act for claiming compensation by invoking personal accident coverage is not maintainable. The Hon'ble Apex Court in ***Ramkhiladi and Ors. Vs. The United India Insurance Company and Ors. [2020 ACJ 627]***, has considered the right of owner, claiming compensation from the insurance

company under section 163-A and 147 of the Motor Vehicles Act, as observed in paragraph 9.5 as follows:

> *"9.5. It is true that, in a claim under Section 163-A of the Act, there is no need for the claimants to plead or establish the negligence and/or that the death in respect of which the claim petition is sought to be established was due to wrongful act, neglect or default of the owner of the vehicle concerned. It is also true that the claim petition under Section 163-A of the Act is based on the principle of no-fault liability. However, at the same time, the deceased has to be a third party and cannot maintain a claim under Section 163-A of the Act against the owner/insurer of the vehicle which is borrowed by him as he will be in the shoes of the owner and he cannot maintain a claim under Section 163-A of the Act against the owner and insurer of the vehicle bearing Registration No. RJ 02 SA 7811. In the present case, the parties are governed by the contract of insurance and under the contract of insurance the liability of the insurance company would qua third party only. In the present case, as observed herein above, the deceased cannot be said to be a third party with respect to the insured vehicle bearing Registration No. RJ 02 SA 7811. There cannot be any dispute that the liability of the insurance company would be as per the terms and conditions of the contract of insurance. As held by this Court in Dhanraj vs. New India Assurance Co. Ltd.,[(2004) 8 SCC 553], an insurance policy covers the liability incurred by the insured in respect of death of or bodily injury to any person (including an owner of the goods or his authorised representative) carried in the vehicle or damage to any property of a third party caused by or arising out of the use of the vehicle. In the said decision, it is further held by this Court that Section 147 does not require an insurance company to assume risk for death or bodily injury to the owner of the vehicle."*

13. In this case, though the claimant has come forward with the

claim petition against the tortious act committed by the second respondent, he has chosen to file claim against his insurance company by invoking Personal Accident Coverage under section 166 of the Motor Vehicles Act. Admittedly, in the pleadings of the claimant, it shows that the rider of the TVS XL Super bearing Registration No.PY-01-AM-7234, Second Respondent is the tortfeasor, being so, the claimant by invoking section 166 of the Motor Vehicles Act is not entitled to get compensation. Since, section 166 of the Motor Vehicles Act is based on fault liability, only the tortfeasor is liable to pay compensation. In this case, the tortfeasor is the second respondent, who rode the first respondent's TVS XL Super motorcycle, hence, the compensation shall be payable only by Respondent Nos.1 and 2. Since the offending vehicle is not insured, the insured has chosen to invoke Personal Accident Coverage.

14. The Hon'ble Apex Court in ***Ramkhiladi case*** cited supra, has directed the insurance company to pay compensation to the claimant therein by invoking personal accident cover, since the case involved therein is a fatal case and the insured therein was died in the accident. Even though, it is contended by the claimant that he had paid premium of Rs.50 under the

head "P.A. Owner – Driver" in the insurance policy marked as Ex.P.6 towards Personal Accident Coverage. Ex.C.1 – Disability Certificate issued by the Medical Board shows that the claimant has sustained 3% permanent disability and Ex.P.12 – Medical records shows that the claimant has sustained *"Coller Bone fracture"*, which does not fall within the schedule injury as agreed between the parties. The Personal Accident Cover under Section III for Registered Owner Cum Driver (CSI) is Rs.1,00,000/-. The Section III of IMT prescribes the scope of Capital Sum Assured (CSI) for Personal Accident Cover shows that only the below listed schedule injuries alone is liable to be compensated under the personal accident cover.

S.No.	***Description***	***Scale of Compensation***
1.	Death	100%
2.	Loss of two limbs or sight of two eyes or one limb and sight of one eye.	100%
3.	Loss of one limb or sight of one eye	50%
4.	Permanent total disablement from injuries other than named above.	100%

15. Based on the above observations, this Court is of the view,

since the claim petition is filed under section 166 of the Motor Vehicles Act, and the claimant herein is not entitled to get compensation from his own insurer by invoking Personal Accident Coverage. Therefore, the compensation of Rs.1,00,000/- awarded by the Tribunal based on the Personal Accident Coverage as per insurance policy is not proper.

16. Ex.C.1 – Disability Certificate issued by the Medical Board shows that the claimant was assessed with disability of 3% and by following the norms, this Court is inclined to award Rs.9,000/- (Rs.3,000/- per percentage of disability) under the head 'Disability'. The claimant is also entitled to Rs.10,000/- under the head pain and suffering, Rs.3,000/- under the head Transportation and damage to clothes, Rs.1,000/- towards attender charges, Rs.5,000/- towards loss of income during the treatment period and Rs.2,000/- towards extra nourishment.

17. Accordingly, the compensation awarded under various heads by this Court is as follows:

S.No.	Description	Amount awarded by this Court (Rs)
1.	Disability (Rs.3,000/- X 3%)	9,000/-
2.	Pain and Suffering	10,000/-
3.	Transportation and damage to clothes	3,000/-
4.	Attender Charges	1,000/-
5.	Loss of income during treatment period	5,000/-
6.	Extra Nourishment	2,000/-
	Total Compensation	**30,000/-**

18. In the result, this Civil Miscellaneous Appeal is allowed and the compensation awarded by the Tribunal of Rs.1,00,000/- under Personal Accident Coverage is hereby set aside and this Court hereby quantified the compensation as **Rs.30,000/- (Rupees Thirty Thousands only)** along with interest at the rate of 7.5% per annum from the date of filing of Claim Petition till the date of deposit, excluding the default period, if any. The Respondents 2 and 3 are jointly and severally liable to pay compensation to the claimant and they are directed to deposit the amount awarded by this Court along with interest and costs, within a period of six weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P. No.304 of 2017 on the file of the Special Sub Court No. II, Motor Accidents

Claims Tribunal, Villupuram. On such deposit, the 1st respondent/ claimant is permitted to withdraw the award amount now determined by this Court along with interest and costs. The insurance company is given liberty to withdraw the deposited amount, if any. The Tribunal shall disburse the amount now awarded by this Court by directly giving credit to the Savings Bank Account of the claimant. Since this Court has granted compensation, the 1st respondent/ claimant is directed to pay the necessary Court fee, if any, on the compensation awarded. Consequently, connected civil miscellaneous petition stands closed. There shall be no order as to costs in the present appeal.

17.04.2024

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Index:Yes/No
Speaking Order:Yes/No
Neutral Citation Case: Yes/No

To:

1. The Special Sub Judge,
   Motor Accident Claims Tribunal,
   Special Sub Court No.II,
   Villupuram.

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

<u>K. RAJASEKAR, J.</u>

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<u>C.M.A. No. 2342 of 2021</u>

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