



C.M.A.No.1263 of 2022

In the High Court of Judicature at Madras

Dated : 05.4.2024

Coram :

The Honourable Mr.Justice N.ANAND VENKATESH

Civil Miscellaneous Appeal No.1263 of 2022

R.Vijay Sambath

...Appellant

Vs

The Branch Manager, New India
Assurance Company Ltd.,
Ground Floor, S.S.Pillai Complex,
Thottamkeezhaveedhi,
Porayar Town-609307.
Sirkazhi.

...Respondent

APPEAL under Section 173 of the Motor Vehicles Act praying to set aside the award dated 12.1.2022 passed by the Motor Accidents Claims Tribunal, Karaikal at Puducherry in M.A.C.T.O.P.No.75 of 2017 and consequently allow the claim petition in M.A.C.T.O.P.No.75 of 2017 as prayed for.

For Appellant : Ms.G.Lavanya
For Respondent : Mr.P.Sankaranarayanan

JUDGMENT

The appellant, whose claim petition in M.C.O.P.No.75 of 2017 on the file of the Subordinate Court (Motor Accidents Claims Tribunal),



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Karaikkal, Puducherry (for short, the Tribunal below) was dismissed by award dated 12.1.2022, has filed this appeal before this Court.

2. Heard the learned counsel for the appellant and the learned counsel appearing for the respondent.

3. The case of the appellant is as follows :

(i) The appellant was returning back from his work on 02.1.2016 at about 11.30 PM in his two wheeler. At that point of time, unexpectedly, a cattle crossed the road resulting in the two wheeler dashing on it and he was thrown out of the two wheeler, by which, he sustained grievous injuries. He underwent treatment as an inpatient from 03.1.2016 to 21.5.2016. He also underwent a open reduction internal fixation clavical plating operation on 08.1.2016.

(ii) It was under those circumstances, the appellant filed the claim petition before the Tribunal below seeking for compensation from the respondent under special personal accident coverage to the owner. On receipt of the notice sent by the appellant, the branch office of the respondent at Nagapattinam issued a reply to the appellant stating that he would be entitled to claim a sum of Rs.1 lakh. As the appellant



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was not satisfied with the amount suggested by the Insurance Company, the claim petition came to be filed before the Tribunal below seeking for a higher compensation.

(iii) However, the Tribunal below, on considering the facts and circumstances of the case and perusing the policy, under which, the appellant is covered, came to the conclusion that the appellant is governed by the contract under the policy, that had the appellant paid the premium amount, he would be entitled for payment of compensation under that policy and that in order to enforce the contractual obligation, the appellant could not approach the Tribunal below seeking for compensation. Ultimately, the Tribunal below dismissed the claim petition by the impugned award. Aggrieved by that, the appellant is before this Court.

4. In the considered view of this Court, the appellant is entitled to claim compensation under the special personal accident coverage, for which, he paid the premium and the same is evident from Ex.P1, which is the insurance policy.



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5. Admittedly, in this case, the cow had crossed the road and as a result, the two wheeler hit the cow and the accident had taken place resulting in the injuries sustained by the appellant. If, according to the appellant, the claim amount has not been paid under the policy, it leads to enforcement of a contractual liability, which cannot be done by approaching the Tribunal below and it will amount to a deficiency of service on the part of the Insurance Company. Hence, the appellant has to necessarily approach a different forum to redress his grievance. Certainly, the appellant cannot approach the Tribunal below by filing a claim petition under Section 166(1) of the Motor Vehicles Act.

6. The Tribunal below rightly rejected the claim made by the appellant by giving liberty to him to enforce his right before the appropriate forum and claim compensation under the special personal accident coverage policy. This finding rendered by the Tribunal below does not suffer from any illegality nor warrants interference of this Court.

7. In the result, the above civil miscellaneous appeal is dismissed confirming the impugned award passed by the Tribunal below and



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giving liberty to the appellant to claim compensation under the special personal accident coverage policy from the respondent. If, ultimately, the same is not paid, the appellant has to seek for a remedy before the appropriate forum. No costs.

05.4.2024

To

- 1.The Subordinate Court (Motor Accidents Claims Tribunal), Karaikkal, Puducherry.
- 2.The Branch Manager, New India Assurance Company Ltd., Ground Floor, S.S.Pillai Complex, Thottamkeezhaveedhi, Porayar Town-609307. Sirkazhi.

RS



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N.ANAND VENKATESH,J

RS

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