IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.03.2024

CORAM:

THE HONOURABLE MR. JUSTICE K. RAJASEKAR

C.M.A. No. 2136 of 2021
and C.M.P. No. 11792 of 2021

Iffco-Tokio General Insurance Company Ltd.,
No.148, Vinayaka Complex, 2nd Floor,
Opp. Ganesh TVS show room,
Erode-638 011. ... Appellant / Petitioner

Vs.

S. Thangaraj ... Respondent/ Respondent

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and decree dated 08.01.2020 passed in M.C.O.P. No. 263 of 2012 on the file of the Subordinate Judge, Motor Accident Claims Tribunal, Sankari.

For Appellant	:	M/s. N. Somasundaar
For Respondent	:	M/s. C. Kulanthaivel

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JUDGMENT

This Civil Miscellaneous appeal has been filed by the insurance company challenging the Judgment and Decree awarded in M.C.O.P. No. 263 of 2012, dated 08.01.2020 on the file of the Subordinate Judge, Motor Accident Claims Tribunal, Sankari.

2. For the sake of convenience, the parties are referred herein according to their litigative status and rank before the Tribunal. The brief facts leading to filing of this appeal is as follows:

3. On 15.12.2011 at about 11:00 AM, the claimant was riding a Hero Honda Passon Plus motorcycle on Idappadi to Poolampatti road, while he reached near Thevur Junction road, due to dumping of soil, he skidded and fell down from the motorcycle, thereby sustained comminuted distal radius fracture left. For the injuries sustained, the claimant has filed claim petition seeking compensation for a sum of Rs.6,25,000/- by invoking Personal Accident Coverage under Section 166 of the Motor Vehicles Act, 1988 against his own insurer, who is the appellant herein.

4. The respondent – insurance company filed counter and disputed the age, occupation and income of the claimant and also the injuries sustained, treatment undergone by the claimant. The insurance company also contended that the accident was taken place only due to the negligence of the claimant and without involvement of any third party vehicle, no compensation is payable under Section 166 of the Motor Vehicles Act.

5. The Tribunal after considering the evidence placed on record, held that the claimant has paid Rs.50/- towards personal package claim, which covers Rs.1,00,000/- as per the contract between the insured and the insurer, therefore awarded Rs.1,00,000/- as compensation along with interest @ 7.5% per annum from the date of filing of petition till the date of realization.

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

7. The learned counsel for the insurance company submitted that it

is the specific case that the claimant himself is the tortfeasor, but the Tribunal has not properly appreciated the evidence placed on record and directed the insurance company to pay compensation by invoking Personal package claim. He further submitted that the injuries sustained by the claimant 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, hence the claim petition is not permissible and prays to set aside the award of the Tribunal.

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 Rs.50/- was paid as a premium towards personal package claim, hence the Tribunal has directed the insurance company to pay compensation by invoking Personal package claim, as per the contract of agreement entered between the claimant and his insurer, 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 by invoking Section 166 of the Motor Vehicles Act against his own insurer under personal package claim for the injuries sustained by him during the road accident that took place on 15.12.2011. Based on Ex.P.6 – insurance policy, the Tribunal has proceeded that Rs.50/- was paid as a premium towards personal package claim, hence awarded compensation in terms of the insurance policy, and directed the insurance company 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:

> ***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.*
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> ***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.*
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> ***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, the claimant has come forward with the claim petition against his insurance company by invoking Personal package claim under Section 166 of the Motor Vehicles Act. The claimant himself has to be treated as tortfeasor, since the accident has taken place only due to his own negligence and without involvement of any third party vehicle, whereas the Section 166 is based on the fault liability, hence the claim petition is not permissible.

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. On perusal of the award, it shows that the Tribunal has not discussed about the nature of injuries sustained by the claimant, however, it has awarded entire coverage amount as agreed in the insurance policy – Ex.P.6, on the ground that the claimant had paid premium of Rs.50/- towards Personal package claim.

15. Ex.P.12 – Disability Certificate shows that the claimant has sustained 13% permanent disability, but no witnesses were examined to prove the disability, which shows that there is no disability caused to the claimant herein. Ex.P.2 – Wound certificate and Ex.P.3 – Discharge Summary shows that the claimant has sustained *"Comminuted distal radius fracture left"*, 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%

16. 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 package claim. Therefore, the compensation of Rs.1,00,000/- awarded by the Tribunal based on the Personal package claim, as per insurance policy is not proper.

17. In the result, this Civil Miscellaneous Appeal is allowed and the compensation awarded by the Tribunal of Rs.1,00,000/- under Personal package claim is hereby set aside. The insurance company is also given liberty to withdraw the amount deposited, if any. Consequently, connected

civil miscellaneous petition stands closed. There shall be no order as to costs in the present appeal.

15.03.2024

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

To:

1. The Sub Judge,
   Motor Accident Claims Tribunal,
   Sankari.

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

K. RAJASEKAR, J.

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