IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.12.2024

CORAM :

THE HONOURABLE MR. JUSTICE **M. DHANDAPANI**

C.M.A.No.2352 of 2021
and
C.M.P.No.13220 of 2021

United India Insurance Co.Ltd.
Ragavan Complex,
Ariyalur Town,
Ariyalur Taluk,
Ariyalur District. ... Appellant

Vs.

Rajesh Kumar ... Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 05.03.2020 made in MCOP.No.57 of 2016 on the file of the Motor Accident Claims Tribunal (Addl. Sub Judge) at Ariyalur.

For Appellant : M/s.I.Malar

For Respondents : No appearance

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JUDGMENT

The above appeal is filed by the appellant / insurance company challenging the compensation awarded by the Motor Accident Claims Tribunal (Addl. Sub Judge) at Ariyalur in the Judgment and decree in MCOP.No.57 of 2016 dated 05.03.2020.

2. On 07.03.2015 at about 6.45 pm, when the respondent was driving his two wheeler bearing Regn.No.TN 61 B 0909 insured with the appellant / insurance company, due to unexpected slip, the respondent was not able to control his vehicle and dashed the offending vehicle bearing Regn.No.TN 48 W 8183 which came from east to west direction, due to which, the respondent sustained grievous injuries and was admitted in the hospital. Claiming compensation in a sum of Rs.7,00,000/-, the claim petition has been filed by the respondent / claimant.

3. Before the Tribunal, the respondent / claimant had examined

P.W.1 and P.W.2 and marked Exs.P.1 to Ex.P.7. On the side of the appellant / insurer of the claimant's vehicle, they have neither examined any witnesses nor marked any documents and Court document was marked as Ex.C1. After adjudication, the Tribunal awarded a sum of Rs.55,000/- as compensation to the claimant payable by the appellant / insurance company. Challenging the same, the appellant / insurance company has preferred the present appeal.

4. The learned counsel appearing for the appellant / insurance company submitted that since the claimant is a tortfeaser, the claim petition filed by the claimant against his own insurance company cannot be maintainable u/s.140 of the Motor Vehicles Act. He further submits that though the Tribunal has awarded PA cover to the claimant on the ground that if the injured person is not a third party but the owner, he can claim compensation against personal accident insurance cover under contractual liability, however, in the present case on hand, as per Section III of the Personal Accident Cover for Owner-cum-Driver, the injuries sustained by the claimant does not come within the purview of the policy conditions. Hence, the appellant / insurance company is not liable to

indemnify the claimant. Accordingly, she prayed to allow this appeal.

5. As per contractual liability, PA cover is subject to the terms exceptions conditions and limitation of the Policy which is as follows:

Sl.No	*Nature of Injury*	*Scale of compensation*
(i)	Nature of injury	100%
(ii)	Death	100%
(iii)	Loss of two limbs or sight of two eyes or one limb and sight of one eye	50%
(iv)	Permanent total disablement from injuries other than named above.	100%

6. Though the notice was served on the respondent / claimant, no one appeared on his behalf. Considering the period of pendency of the above appeal, the same is taken up for final disposal.

7. Heard the learned counsel for the appellant and perused the materials available on record.

8. The factum and manner of the accident is not disputed by the parties. Therefore, this Court is not entering into the said aspect. The main contention of the learned counsel for the appellant / insurance company is that the claimant is a tortfeaser and that injuries sustained by the claimant does not correlate with Section III of the Personal Accident Cover for Owner-cum-Driver. Though the Tribunal has awarded PA cover to the claimant under contractual liability on the ground that if the injured person is not a third party but the owner, he can claim compensation against personal accident insurance cover under contractual liability, however, on a perusal of Section III of the Personal Accident Cover for Owner-cum-Driver, reveals that the injuries sustained by the claimant does not come within the purview of the policy conditions. However, without considering the said aspect, the Tribunal has awarded the aforesaid compensation in favour of the claimant, which is *per se* unsustainable.

9. Accordingly, the Civil Miscellaneous Appeal is allowed and the judgment and decree dated 05.03.2020 made in M.C.O.P.No.57 of 2016

passed by the Motor Accidents Claims Tribunal, Ariyalur is set aside. If any amount deposited by the appellant/insurance company, the appellant/insurance company is permitted to withdraw the same by filing appropriate application before the Tribunal. No costs. Consequently, connected miscellaneous petition is closed.

18.12.2024

Index : Yes / No
Speaking order / Non-speaking order
Netrual Citation Case : Yes / No
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To

1. Motor Accident Claims Tribunal (Addl. Sub Judge) at Ariyalur.

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

M.DHANDAPANI, J.

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