THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.06.2024

CORAM:

THE HONOURABLE MR.JUSTICE R.SAKTHIVEL

C.M.A.No.1815 of 2022
and
C.M.P.No.13040 of 2022

TATA AIG General Insurance Company Limited,
1st Floor, 6, 7, Karur Byepass Road,
Near Kalaingar Arivalayam,
Trichy-2. ..Appellant/ Respondent

Vs.

Raj Mohan ..Respondent/ Petitioner

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree in MCOP.No.142 of 2016, dated 12.05.2022 on the file of the Motor Accident Claims Tribunal, In the Court of the Chief Judicial Magistrate, Perambalur.

For Appellant : Mr.Rajadurai,
for M/s.M.B.Gopalan Associates

For Respondent :Mrs.Ramya V.Rao (Enrol. No.457/2000),
Amicus Curiae

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J U D G M E N T

The present Civil Miscellaneous Appeal is directed against the judgment and decree dated 12th May 2022 passed by the Motor Accident Claims Tribunal, (Chief Judicial Magistrate), Perambalur in MCOP.No.142 of 2016.

2. For the sake of convenience the parties will be referred to as per their rank in the original petition.

3. The case of the petitioner is that on 04.06.2015 at about 4.30 p.m., when the petitioner was riding his motorcycle bearing Registration No.TN-48-AB-4047 in Somarasampettai – Allithurai Road, a rider riding the motorcycle bearing Reg.No.TN-48-T-6585 in a rash and negligent manner, suddenly crossed the road and thereby collided with the petitioner. Due to the accident the petitioner sustained multiple grievous injuries all over his body including a fracture on his front left side head, injury in the left eye, completely broken lower jaw and three missing teet in the upper jaw.

4. According to the petitioner after the accident he was admitted to the Government Hospital in Trichy as an in-patient on June 4 2015 and then for further treatment, he was admitted to Ratna Global Hospital in Trichy as an in-patient from June 4 2015 to June 16 2015. At the time of the accident, the petitioner was 35 years old and was working as a medical representative and purchaser and distributor thereby earning a sum of Rs.3,300/- per month.

5. The police registered a criminal case against the petitioner in Crime No.225 of 2015 under Sections 279 and 337 of the Indian Penal Code 1860. The petitioner is the owner and rider of the motorcycle bearing Reg.No.TN-48-AB-4047 and the same is insured with the respondent Insurance Company. Accordingly, he seeks a sum of Rs.20,00,000/- as compensation from the respondent.

6. The respondent/ Insurance Company filed a counter stating that as per the terms and conditions of the policy issued by the respondent, to the petitioner the liability of the Insurance Company is not covering the petitioner and the petitioner being a party to the policy of contract is not a third party to the policy, the petitioner being the owner of the vehicle is not entitled to file this petition claiming compensation. Accordingly, the respondent Insurance Company prayed to dismiss the original petition.

7. On the side of the petitioner, the petitioner examined himself as PW1 and Exs.-P1 to P13 were marked. On the side of the respondent one Karthi, Legal Officer attached to the respondent office was examined as R.W.1 and Ex-R1 and Ex-R2 were marked. The Disability Certificate issued by the Medical Board was marked as Ex.C1.

8. The Tribunal framed the following points for consideration:-

1) Whether the claim petition filed by the petitioner/ owner of the two wheeler bearing Registration No.TN-48-AB-4047 U/S.163-A of M.V. Act against his own insurance company is maintainable?

2) Whether the petitioner is entitled to claim the compensation amount from the respondent? If so what should be quantum of compensation?

9. After hearing both sides the Tribunal found that the petitioner is not a third party to the Insurance policy offered by the respondent Insurance Company and the petitioner being the owner of the vehicle, the claim petition under Section 163A of the Motor Vehicles Act, 1988 against his own insurer is not maintainable. As far as the Point No.2 is concerned, the Tribunal held that the petitioner as per Ex.P9 & Ex.R1, the Insurance policy of the respondent Insurance Company has agreed to pay

"Compulsory Personal Accident Cover for owner-driver at Rs.1,00,000/-", for which an additional premium of Rs.50/- was collected from the petitioner. Hence, as per the contract of policy the petitioner is entitled to claim personal accident coverage for the accident upto Rs.1,00,000/-. Accordingly, the Tribunal awarded a sum of Rs.1,00,000/- as compensation payable by the respondent to the petitioner.

10. Feeling aggrieved with the said order, the Insurance Company filed this Civil Miscellaneous Appeal.

11. This Court admitted the appeal on August 22, 2022 and ordered notice to the respondents. The notice has been served on the petitioner/ respondent herein. Despite service of notice, the petitioner did not choose to appear before this Court and contest the case. Considering the facts and circumstances, this Court appointed Mrs.Ramya V.Rao, as *Amicus Curiae* to appear on behalf of the petitioner/ respondent in this appeal.

12. Heard Mr.Rajadurai, learned counsel appearing for the appellant Insurance Company and Mrs.Ramya V.Rao, learned *Amicus*

Curiae for the respondent.

13. Mr.Rajadurai, learned counsel appearing for the appellant / respondent has submitted that as per the Ex.C1 - disability certificate, the Doctor has mentioned 0% disability, which means the petitioner has no disability. He further submitted that the petitioner filed the claim petition against his own insurer and the petitioner is not a third party to the insurance policy. He further submitted that the petitioner has not impleaded with the owner and the rider of the opponent vehicle. The learned Tribunal wrongly understood the concept of personal accident coverage and erroneously passed the award against the Insurance Company. In support of his submissions, he relied upon the judgments of this Court in ***Royal Sundaram Allianz Insurance Co. Ltd., Vs. Somu*** reported in ***2020 (1) TN MAC 547*** and ***The Cholamandalam MS General Insurance Company Limited Vs. Ramesh Babu*** reported in ***MANU/TN/4713/2020.*** Accordingly, he prayed to allow the appeal and set aside the award.

14. Mrs.Ramya V.Rao, learned *Amicus Curiae* (Enrol. No.457/2000) appearing for the respondent has submitted that the petitioner has not suffered any injury as enumerated in Schedule III of the Personal Accident Cover for owner-driver under the policy. Hence, the petitioner is not entitled to any compensation from the Insurance Company. She also endorsed the judgments relied upon by the learned counsel for the appellant.

15. This Court has perused Ex.R1, the copy of the insurance policy. Schedule III of the Personal Accident Cover for Owner-driver reads as follows:-

> *Subject otherwise to the terms exceptions conditions and limitations of this policy, the Company undertakes to pay compensation as per the following scale for bodily injury/ death sustained by the Owner-Driver of the vehicle, in direct connection with the vehicle insured or whilst mounting into/dismounting from or traveling in the insured vehicle as a co-driver, caused by violent accidental external and visible means which is independent of any other cause shall within six calendar months of such injury result in :*

	Scale of
(i) Death	*100%*
(ii) Loss of two limbs or sight of two eyes or one limb and sight of one eye.	*100%*
(iii) Loss of one limb or sight of one eye	*50%*
(iv) Permanent total disablement from injuries	*100%*

	Scale of
other than named above.	

Provided always that

(a) the compensation shall be payable under only one of the items (i) to (iv) above in respect of the owner-driver arising out of any one occurrence and the total liability of the insurer shall not in the aggregate exceed the sum of Rs.1 lakh during any one period of insurance.

(b) no compensation shall be payable in respect of death or bodily injury directly or indirectly wholly or in part arising or resulting from or traceable to (1) intentional self injury suicide or attempted suicide physical defect or infirmity or (2) an accident happening whilst such person is under the influence of intoxicating liquor or drugs.

(c) Such compensation shall be payable directly to the insured or to his/her legal representatives whose receipt shall be the full discharge in respect of the injury to the insured.

This cover is subject to

(a) the Owner-Driver is the registered owner of the vehicle insured herein;

(b) the Owner-Driver is the insured named in this policy;

(c) the Owner-Driver holds an effective driving license, in accordance with the provisions of Rule 3 of the Central Motor Vehicles Rules, 1989, at the time of the

accident.

16. In view of the above conditions stated in the policy with reference to personal accident cover for owner-driver, this Court is of the considered view that the Tribunal has committed error in not considering the nature of the policy. The petitioner has suffered 0% disability i.e., nil% disability. More over the injuries allegedly suffered by the petitioner does not come under the injuries enumerated in the policy. Hence, the petitioner is not entitled to claim compensation against the Insurance Company. The Tribunal is not right in awarding compensation against the appellant/ Insurance Company. Hence, this Civil Miscellaneous Appeal deserves to be allowed.

17. This Court records the assistance rendered by Mrs.Ramya V. Rao the learned *Amicus Curiea* and Mr.Rajadurai Advocate appearing for appellant Insurance Company.

18. In the result, this Civil Miscellaneous Appeal is **allowed**. No costs. Consequently, the connected civil miscellaneous petition is closed.

26.06.2024

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Index : Yes/No
Internet : Yes/No
Neutral Citation : Yes/No
Speaking order / Non-Speaking order

To

The Chief Judicial Magistrate,
Motor Accident Claims Tribunal,
Perambalur.

R.SAKTHIVEL,J.

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C.M.A.No.1815 of 2022

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