IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:28.02.2024

CORAM:

THE HONOURABLE MRS. JUSTICE R. KALAIMATHI

C.M.A.No.1903 of 2020
&
C.M.A.No.2030 of 2021
&
C.M.P.No.14070 of 2020

C.M.A.No.1903 of 2023:

The Divisional Manager,
United India Insurance Co.Ltd.,
Third Party Claims Hub,
Katpadi Road, Vellore.

Now at
Motor Third Party Service Hub,
A.R.Plaza, No.35,36 & 37,
45 feet Road Extension,
Balaji Nagar, Puducherry 605 011. .. Appellant

/versus/

1.R.Lakshmanan
2.A.Parasuraman
3.P.Sathy .. Respondents

Prayer: Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988, praying to set aside the order and decreetal order dated 14.08.2020 in M.C.O.P.No.205 of 2017 passed by the Special Sub Judge/MACT-Thirupattur and allow the above C.M.A.

For Appellant :Mr.P.Sankaranarayanan

For R1 :M/s F.Terry Chella Raja
For R2 &R3 :Mr.Karan & Uday

C.M.A.No.2030 of 2021

R.Lakshmanan .. Appellant

/versus/

1.A.Parasuraman

2.P.Sathy

3.The Divisional Manager,
United India Insurance Company Limited,
Third Party Claim HUB,
Katpadi Road, Vellore. .. Respondents

Prayer: Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988, praying to modify and enhance the award dated 14.08.2020 made in M.A.C.T.O.P.No.205 of 2017 on the file of the Motor Accident Claims Tribunal/Special Subordinate Judge, Tirupattur.

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| For Appellant | :M/s F.Terry Chella Raja |
| For R1 &R2 | :Mr.Karan & Uday |
| For R3 | :Mr.P.Sankaranarayanan |

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COMMON JUDGMENT

Civil Miscellaneous Appeal No.1903 of 2020 is filed against the judgment and decree dated 14.08.2020 passed in M.C.O.P.No.205 of 2017 on the file of the Motor Accident Claims Tribunal, Special Sub Judge, Thirupattur, by the Insurance Company on the question of liability.

Civil Miscellaneous Appeal No.2030 of 2021 is filed by the claimant to modify and enhance the award dated 14.08.2020 made in M.A.C.T.O.P.No.205 of 2017 on the file of the Motor Accident Claims Tribunal/Special Subordinate Judge, Tirupattur.

**2.** The claim petition was filed under Section 163(A) of the Motor Vehicles Act, 1988, claiming compensation of Rs.5,00,000/- for the injury sustained in an accident that occurred on 18.02.2017.

**3.** The claimant R.Lakshmanan, who was the rider of the motorcycle bearing Reg.No.TN-83-W-2014 filed the claim petition against the owner, driver of the tractor and the Insurance Company of his motorcycle.

**4.** The Tribunal, after evaluating the evidence, has passed an award of Rs.1,85,981/- together with interest at the rate of 7.5% p.a., from the date of petition, till the date of deposit and the third respondent/Insurance company was saddled with the liability to pay a sum of Rs.1,00,000/- to the petitioner with proportionate interest under the Personal Accident Cover/Limited liability clause.

**5.** Mr.P.Sankaranarayanan, the learned counsel appearing for the appellant/Insurance Company strenuously argued that the petitioner did not choose to take steps to refer him to the Medical Board. Unless it is established by the claimant that he suffered injuries on the account of accident, he will not be entitled for Personal Accident

Coverage. Therefore, the Insurance Company be absolved from all the liabilities.

**6.** Per contra, the learned counsel appearing for the claimant/1st respondent herein vehemently contended that as per Ex.P8 (Policy), the claimant is entitled for Personal Accident Coverage. Based on the same, the compensation was rightly granted by the Tribunal.

**7.** To substantiate his arguments, the following judgments were referred to (i) The Cholamandalam Ms General Insurance Company Limited v. Ramesh Babu reported in MANU/TN/4713/2020, wherein in the said case, the owner-cum-driver of Tata Indica Tourist Taxi bearing Reg.No.TN-32-L-8595, while he was driving the said vehicle from Tiruvannamalai to Kallakurichi Main Road, near Vanapuram, due to unavoidable reason, dashed against the palm tree on the road side, which resulted in the road traffic accident. The claim petition was filed by the owner-cum-driver against the Insurance Company. The claim was resisted by the Insurance Company stating that the owner of the vehicle is not a third party and therefore, there is no statutory coverage provided in terms of Section 147(1) of the Motor Vehicles Act, 1988. It was held that the Personal Accident Coverage Policy has been agreed between the appellant/Insurance Company and the respondent and Rs.2,00,000/- is fixed under the Personal Accident Coverage Policy. The judgment and decree passed by the Motor Accident Claims Tribunal, Kallakurichi, was set aside by allowing the Civil Miscellaneous Appeal in favour of the claimant.

**8.** At trial, the claimant has examined himself as PW-1. 16 documents were marked by the petitioner's side. Medical records are Exs.P2 and P3. On the side of the respondents, neither any witness was examined nor document was marked.

**9.** It is the evidence of PW-1/claimant that on 18.02.2017 at about 08.30 p.m., while he was riding his two wheeler bearing Reg.No.TN-83- W-2014 along Tirupattur to Puduranaadu Main Road on the extreme left side of the road, a Tractor bearing Reg.No.TN-

23-BY-7188 came in a rash and negligent manner and dashed on the petitioner's vehicle near Appavu Gounderpallam, opposite to one Annadurai House. In the result, he sustained grievous injury, due to the accident. Therefore, the accident was only due to rash and negligent driving of the tractor driver, which is not in dispute.

**10.** It is pertinent to note that the counter reads that the accident occurred only due to the negligence of the tractor driver.

**11.** It is also relevant to note that as the petitioner did not choose to take steps to refer him to the Medical Board for ascertaining percentage of disability, the petitioner was not granted any amount for the loss of earning during the treatment period. Except for partial permanent disability, under other heads namely, for pain and suffering, for extra nourishment, for attender charges, for medical expenses, for loss of income and for loss of amenities, a total amount of Rs.1,85,981/- was quantified and the order was passed directing the third respondent to pay only a sum of Rs.1,00,000/- to the petitioner, based on the limited liability clause found in Ex.P8-Insurance Policy.

**12.** Ex.P8 is the copy of the Insurance Policy pertaining to the motorcycle of the claimant (TN-83-W-2014). The date of the accident is 18.02.2017 at about 08.30 p.m. The Policy is a package policy. Period of Insurance is between 02.03.2016 and 01.03.2017(mid night). On the date of the accident, the policy was very much alive.

**13.** There is no insurance coverage for the Tractor. The Insurance Company of the claimant's vehicle is arrayed as 3rd respondent.

**14.** It is an admitted fact that the negligence is attributed on the driver of the Tractor. Claim was made to the third respondent-Insurance Company under Section 163A of the Motor Vehicles Act, 1988.

**15.** On a close perusal of the schedule of premium, an amount of Rs.50/- was collected towards Personal Accident Cover for owner-cum-driver. The liability is limited to Rs.1,00,000/-. Based on the same, the Tribunal has ordered the compensation of Rs.1,00,000/-, though it was quantified the compensation at Rs. 1,85,981/-. The insurer is bound by the terms of policy. As per the terms of the policy for the Personal Accident Coverage for owner-cum-driver as the premium is collected, now it should not lie in the mouth of the Insurance Company that there is no Personal Accident Cover for the owner. The Tribunal has rightly fixed the liability on the Insurance Company, which is limited one, as per the terms of the policy and it cannot be found fault with.

**16.** C.M.A.No.2030 of 2021 has been filed for enhancement of compensation by the claimant. The total compensation was fixed at Rs.1,85,981/- by the Tribunal. But, it was limited to Rs.1,00,000/- by the Tribunal, based on the limited clause in respect of personal accident cover for the owner, as the contract of Insurance Company is governed by the terms of policy.

**17.** As mentioned supra, as per the terms of policy, the personal accident coverage for the owner is limited to Rs.1,00,000/- and not more than that. Therefore, the claimant is not entitled to seek for enhancement as per the terms of the policy.

**18**. Based on the aforestated discussions, this Civil Miscellaneous Appeals stands dismissed.

**19.** In the result, ***these Civil Miscellaneous Appeals are dismissed.*** The judgment and decree passed in M.C.O.P.No.205 of 2017 dated 14.08.2020 by the Special Sub Judge, MACT-Thirupattur, stands confirmed. There is no order as to costs. Consequently, connected Miscellaneous Petition is closed.

28.02.2024

Index:yes/no
Neutral Citation:yes/no
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To:

The Motor Accident Claims Tribunal,
Special Subordinate Judge,
Thirupattur.

R. KALAIMATHI, J.

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