IN THE HIGH COURT OF JUDICATURE AT MADRAS

CORAM :

THE HONOURABLE **MR.JUSTICE RMT.TEEKAA RAMAN**

C.M.A.No.3662 of 2021
and C.M.P. No.21475 of 2021

Judgment reserved on 07.02.2024	Judgment pronounced on 21.03.2024

The Branch Manager
New India Assurance Co. Ltd.,
No.2, B.R.Complex, Woods Road,
Anna Salai, Chennai. .. Appellant

Vs.

Panneer .. Respondent

Prayer : This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988 against the judgment and decree passed in MCOP No.736 of 2007 dated 27.04.2021 on the file of the Motor Accident Claims Tribunal (Principal Sub Judge) Puducherry.

For Appellant : Mr.J.Chandran

For Respondent : No appearance

JUDGMENT

The appellant/Insurance company has filed the present appeal judgment and decree passed in MCOP No.736 of 2007 dated 27.04.2021 on the file of the Motor Accident Claims Tribunal (Principal Sub Judge) Puducherry.

2. The learned counsel appearing for the appellant/Insurance company would contend that the nature of the policy only envisages personal accident coverage for Rs.1,00,000/- and the compensation awarded by the Tribunal under other heads have to be excluded. The injuries sustained by the respondent does not fall under Section 4 of the Scheduled Injuries mentioned in the Terms and Conditions of Package Policy, Ex.R1.

3. Though notice has been served on the respondent and his name is printed in the cause list, there is no representation for him.

4. The factum of accident, manner of accident, involvement of the vehicle and existence of insurance policy on the date of accident and the vehicle being insured with the appellant/insurance company and validity of

the policy are not in dispute. The only point that was agitated by the learned counsel appearing for the appellant is that as per Ex.P3 – Insurance Policy, there is only a personal accident coverage and the same is limited upto Rs.2,00,000/- as owner/driver of the vehicle and therefore, the Tribunal has committed an error in awarding compensation of Rs.1,09,460/-.

5. The respondent is the owner cum driver of the mini lorry bearing Regn.No.TN21 Q 2647. On 25.06.2006, at about 8.00 p.m. when the respondent was going in his mini lorry with load from Pondicherry Union Private India Computer Company, Pondicherry to Madurai for unloading computer spares, on the extreme left side near Chethathamangalam Bus stop, the driver of the lorry which was proceeding in front of the respondent, applied sudden brake due to which the respondent lost his control and dashed on the back side of the lorry. In the said accident, the respondent sustained grievous injuries and hence filed the above claim petition claiming compensation.

6. During the cross examination, PW1 has admitted that as per Ex.P3

– Insurance Policy, it is a commercial vehicle package policy and Ex.R1 is the standard form of commercial vehicle package policy. The consideration of Ex.P3- Insurance Policy would go to show that the respondent has taken package policy for his mini lorry and that the appellant/Insurance Company has collected Rs.100/- as premium towards the compulsory Personal Accident cover to owner/driver for a sum of Rs.2 lakhs.

7. From the materials on record, especially Exs.P6 & P7 – discharge summaries, I find that the respondent has suffered grievous injuries by way of fracture in medial condyle of right tibia, deep laceration in left leg, loss of two upper teeth, contusion and cut injury in stomach (6 sutures), contusion in chest, cut injury in lips (5 sutures), lacertaion in both knees and head injury. Initially the respondent was given first-aid in G.H. Puducherry and thereafter he was treated at St.Joseph of Cluny Hospital, Pondicherry. In the judgment of this Court in ***CMA No.85 of 2017 dated 19.01.2021,*** the learned Single Judge of this Court has considered the similar question and has held that the Hon'ble Supreme Court in ***National Insurance vs. Ashalatha and other*** has considered the above issue and has held that the liability of Insurance

Company in case of Personal Accident cover of the owner of the insured vehicle is to indemnify the extent limited as per the terms of Contract of Insurance. Accordingly, I hold that there is a clause enumerated under which the Insurance Company will not be liable to pay the insured and the respondent is not entitled to compensation for the injuries sustained by him in the road transport accident.

8. On perusal of Ex.P3- Insurance Policy, I find that the additional premium is paid and hence the ratio laid down by the Hon'ble Division Bench of this Court in ***Deputy Manager, United India Insurance Company Limited v. Rekha and others*** reported in **2017 (5) LW 300** has to be followed. Accordingly, the order passed by the Tribunal is found inconsonance with the above judgment of the Hon'ble Supreme Court in ***Ashalatha's case*** and the Hon'ble Division Bench of this Court which is constantly followed in the judgment of this Court in CMA No.85 of 2017 and hence, in the absence of any point to be agitated, I have no reason to interfere with the well considered decision of the Tribunal.

9. In fine,

(i) this Civil Miscellaneous Appeal is dismissed confirming the judgment and decree passed in MCOP No.736 of 2007 dated 27.04.2021 on the file of the Motor Accident Claims Tribunal (Principal Sub Judge) Puducherry.

(ii) the appellant/Insurance Company is directed to deposit the award amount before the Tribunal alongwith interest and costs, within a period of eight weeks from the date of receipt of a copy of this order, less the amount, if any already deposited.

(iii) on such deposit being made, the respondent /claim petitioner is permitted to withdraw the award amount, less the amount, if any, already withdrawn, by filing necessary application before the Tribunal.

(iv) No costs. Consequently, connected Miscellaneous Petition is closed.

21.03.2024

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

RMT.TEEKAA RAMAN.J,

rgr

To

1. The Principal Subordinate Judge
   Motor Accident Claims Tribunal,
   Puducherry.

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

<u>Judgment made in</u>
<u>C.M.A.No.3662 of 2021</u>

21.03.2024