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Civil Miscellaneous Appeal No.794 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20/11/2024

CORAM:

THE HON'BLE MR. JUSTICE M.DHANDAPANI

C.M.A. No.794 of 2020

and

C.M.P. No.5062 of 2020

The National Insurance Co. Ltd.,
Rep. by its Branch Manager,
No.S-7, Thiru Vee Kaa Industrial Estate,
Guindy,
Chennai.

.... Appellant

Versus

1. Suresh Babu

2. M/s.Shiva's Industrial Caterers (NA) India
No.43, G.S.T. Road,
Tambaram,
Chennai – 600 043.

..... Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree passed in M.C.O.P. No.352 of 2018 on 09.09.2019 on the file of the learned Motor Accident Claims Tribunal (Additional District Judge), Hosur.



For Appellant

: Mr. J. Chandran

For Respondents

: Mr.C. Munusamy for
M/s.R. ArunDattan for R1
R2 – No appearance

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J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the judgment and decree dated 9/9/2019 passed by the Motor Accident Claims Tribunal (Additional District Judge) Hosur, in M.C.O.P.No.352 of 2018.

2. The brief facts of the case is that on 11/8/2002, at about 5.30 hours, the first respondent while driving the van bearing Registration No.TN-22-L-1107 belong to the second respondent and insured with the appellant, near Radio Research Station in Sardhar Patel Road, Chennai, rider of the motorcycle moved to the centre of the road, by which the van driven by the first respondent, dashed against the compound wall of Raj Bhavan, thereby, he sustained injuries.

3. Thereafter, the injured claimant/first respondent filed Claim Petition before the Motor Accidents Claims Tribunal, claiming compensation of Rs.20,00,000/-. After adjudication, the Motor Accidents



Claims Tribunal, awarded a sum of Rs.9,01,200/- to be payable by the appellant, on behalf of the second respondent, with interest, at the rate of 7.5% p.a., from the date of petition till the date of realization, excluding the default period, if any. Aggrieved by the same, appellant Insurance Company has filed this appeal.

4. Heard Mr.J.Chandran, learned counsel for the appellant, Mr.C.Munusamy, learned counsel for the first respondent. There is no representation on behalf of the second respondent.

5. The learned counsel appearing for the appellant submitted that petition towards self inflicted injuries not maintainable under Section 166 of the Motor Vehicles Act. Moreover, the first respondent himself is a tortfeasor.

6. The learned counsel appearing for the first respondent claimant submitted that the Tribunal after considering all the factual aspects, awarded the compensation, which is just and reasonable and hence, the impugned order warrants no interference.



7. Admittedly, the claimant is the driver of the vehicle. The very same issue was considered by this Court in the decision reported in **2021 ACJ 979 CHOLAMANDALAM MS GENERAL INSURANCE CO LTD Vs. RAMESH BABU**, wherein this Court held that personal accident cover for owner-cum-driver is contractual in nature and in the absence of any statutory liability of Insurance Company, provisions of Motor Vehicles Act cannot be invoked. Further Section IV – Personal Accident cover for owner-cum-driver makes it clear that for loss of two limbs or sight of two eyes or one limb and sight of one eye - 100 per cent of CSI, for loss of one limb or sight of one eye – 50 percent of CSI, however, in the present case, is only injuries, in which, the claimant is not entitled to claim compensation.

8. Following the ratio laid down in the decision of this Court reported in **2021 ACJ 979 CHOLAMANDALAM MS GENERAL INSURANCE CO LTD Vs. RAMESH BABU**, appeal is allowed. The judgment and decree dated 9/9/2019 passed by the Motor Accident Claims Tribunal (Additional District Judge), Hosur in M.C.O.P.No.352 of 2018 is set aside. The Insurance Company is permitted to withdraw the entire amount already deposited by them.



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No costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes / No

Speaking Order/Non-Speaking Order

mvs

To

1. The Additional District Judge,
Motor Accident Claims Tribunal,
Hosur.

2. The Section Officer,
V.R. Section,
High Court, Madras – 104.



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M.DHANDAPANI, J

mvs.

C.M.A. No.794 of 2020

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