IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.02.2024

CORAM:

THE HONOURABLE MR. JUSTICE K. RAJASEKAR

C.M.A. No. 3506 of 2021

The Oriental Insurance Company Limited,
Kumbakonam, rep. by its Branch Manger,
1st Floor, Gopal Rao Library Building,
Town Hall Road, Kumbakonam. ... Appellant / Respondent

Vs.

Viswesramoorthy ... Respondent/ Petitioner

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and decree dated 22.11.2017 passed in M.C.O.P. No. 144 of 2016 on the file of the Motor Accidents Claims Tribunal (Sub Court), Karaikkal.

For Appellant : M/s. Elveera Antionette Ravindran

For Respondent : M/s. K. Varadha Kamaraj

JUDGMENT

This Civil Miscellaneous appeal has been filed by the insurance company challenging the Judgment and decree passed in M.C.O.P. No. 144 of 2016, dated 22.11.2017 on the file of the Sub Judge, Motor Accidents Claims Tribunal, Karaikkal, whereby the insurance company is directed to pay the compensation to the claimant herein. The case leading to filing of this appeal is as follows:

2. The respondent/ claimant herein was riding a TVS Scooty bearing Registration No.PY-02-P-4783 on Bharathiar main road, while he reached near Petrol Bunk, Thalatheru, Karaikal, a TATA Ace van bearing Registration No.Py-02-P-304, driven by its driver in a rash and negligent manner, came in the opposite direction in high speed, dashed against the claimant's motorcycle, thereby causing grievous injuries to the claimant herein. A criminal case was registered against the driver of the lorry in Cr.No.153/2015 U/s. 279, 338 of IPC. For the injuries sustained by the claimant, he has filed claim petition seeking compensation for a sum of Rs.3,00,000/- by invoking section 166 (1) of the Motor Vehicles Act, 1988. The claimant has not filed the claim petition against the alleged tortfeasor,

who is the driver of the TATA Ace van, whereas he claims compensation from his own insurer on the ground that there is a personal accident coverage of the package policy and separate premium for the policy for the risk coverage of the claimant has been paid.

3. The respondent – insurance company filed counter and contended that there is no personal accident coverage for the rider of the two wheeler and the claimant, who steps into the shoes of the owner-cum-driver is not entitled to claim compensation under section 166 of the Motor Vehicles Act based on the faulty liability after alleging tortious act against the TATA Ace van driver who was not the party to the proceedings. After considering the evidence placed on record, the Tribunal accepted the case of the claimant and awarded compensation for a sum of Rs.87,500/- along with interest @ 7.5% per annum from the date of filing petition till the date of realization.

4. Aggrieved over the award passed by the Tribunal, the insurance company has filed this appeal. The learned counsel for the insurance company submitted that, section 166 of the Motor Vehicles Act is

based on the fault liability and in this case, the tortfeasor is the TATA Ace van driver but against whom no compensation has been claimed, whereas the compensation has been claimed against the insurance company based on the personal accident coverage. Since the claim itself is made under section 166 of the Motor Vehicles Act for fault liability, invoking personal coverage for the injuries, which are not a schedule injury is not proper and prays to set aside the award of the Tribunal.

5. The learned counsel for the claimant submitted that based on the evidence placed on record, the Tribunal has accepted the case of the claimant and awarded compensation, hence prays to confirm the same.

6. I have considered the submissions made on both sides and perused the materials available on record.

7. In this case, the claimant has chosen to file claim petition against the insurance company by invoking personal accident coverage under section 166 of the Motor Vehicles Act. The Hon'ble Apex Court in ***Deepal Girishbhai Soni and Ors. Vs. United India Insurance Co. Ltd.,***

Baroda [(2004) 5 SCC 385], has held that the claimant has to chose either section 166 or 163-A of the Motor Vehicles Act and he cannot chose both the provisions for seeking compensation in this case. Admittedly, in the pleadings of the claimant, it shows that the driver of the TATA Ace van is the tortfeasor, being so, the claimant by invoking section 166 of the Motor Vehicles Act is not entitled to get compensation by relying on the personal accident coverage.

8. The learned counsel for the claimant has relied on the judgment of this Court in ***National Insurance Co. Ltd. Vs. P. Alagesan [2013 (1) TNMAC 685]***, wherein this Court after analysing the scope of Sections 165, 166 and 167 has held that the owner is entitled to maintain claim against the company interms of comprehensive policy. Subsequently, this Court in ***The Cholamandalam MS General Insurance Company Limited Vs. Ramesh Babu [2021 ACJ 979]*** has held that the claim petition filed under section 166 of the Motor Vehicles Act for claiming compensation by invoking personal accident coverage is not maintainable.

9. Hon'ble Apex Court in ***Ram Khiladi and another vs. the***

United India Insurance Co. Ltd. and another [2020 (1) TNMAC 1 (SC)], has considered the right of owner, claiming compensation from the insurance company under section 163-A and 147 of the Motor Vehicles Act, as observed in paragraph 9.5 as follows:

> *"9.5. It is true that, in a claim under Section 163-A of the Act, there is no need for the claimants to plead or establish the negligence and/or that the death in respect of which the claim petition is sought to be established was due to wrongful act, neglect or default of the owner of the vehicle concerned. It is also true that the claim petition under Section 163-A of the Act is based on the principle of no-fault liability. However, at the same time, the deceased has to be a third party and cannot maintain a claim under Section 163-A of the Act against the owner/insurer of the vehicle which is borrowed by him as he will be in the shoes of the owner and he cannot maintain a claim under Section 163-A of the Act against the owner and insurer of the vehicle bearing Registration No. RJ 02 SA 7811. In the present case, the parties are governed by the contract of insurance and under the contract of insurance the liability of the insurance company would qua third party only. In the present case, as observed herein above, the deceased cannot be said to be a third party with respect to the insured vehicle bearing Registration No. RJ 02 SA 7811. There cannot be any dispute that the liability of the insurance company would be as per the terms and conditions of the contract of insurance. As held by this Court in Dhanraj vs. New India Assurance Co. Ltd.,[(2004) 8 SCC 553], an insurance policy covers the liability incurred by the insured in respect of death of or bodily injury to any person (including an owner of the goods or his authorised representative) carried in the vehicle or damage to any property of a third party caused by or arising out of the use of the vehicle. In the said decision, it is further held by this Court that Section 147 does not require an insurance company to assume risk for death or bodily injury to the owner of the*

vehicle."

10. In the case in hand, the claimant has invoked section 166 of the Motor Vehicles Act, knowing fully well that the tortfeasor or his insurer is not the party to the claim petition. Since, section 166 of the Motor Vehicles Act is based on fault liability, only the tortfeasor is liable to pay compensation. In this case, the tortfeasor is not made as a party, in the petition filed under section 166 of the Motor Vehicles Act, and same is not maintainable. Now, he claims that as per the contract of insurance, he is entitled to claim compensation for the injuries sustained by him.

11. The Hon'ble Apex Court in ***Ramkhiladi case*** cited supra, has directed the insurance company to pay compensation to the claimant therein by invoking personal accident cover, since the case involved therein is a fatal case and the insured therein was died in the accident, whereas in this case, Ex.P.5 – Accident Register shows that, the injured has sustained *soft tissue injury chest wall*, which does not fall within the schedule injury as agreed between the parties. Ex.P.2 - insurance policy dated 14.07.2015 shows that the Personal Accident Cover under Section III for Registered Owner Cum Driver (CSI) is Rs.1,00,000/-. The Section III of IMT prescribes the scope

of Capital Sum Assured (CSI) for Personal Accident Cover shows only the below listed schedule injuries alone is liable to be compensated under the personal accident cover.

S.No.	***Description***	***Scale of Compensation***
1.	Death	100%
2.	Loss of two limbs or sight of two eyes or one limb and sight of one eye.	100%
3.	Loss of one limb or sight of one eye	50%
4.	Permanent total disablement from injuries other than named above.	100%

12. Based on the above observations, this Court is of the view, since the claim petition is filed under section 166 of the Motor Vehicles Act, and the tortfeasor herein is not added as party and the claimant herein is the owner of the vehicle, is not entitled to get compensation for the injuries sustained by him. Accordingly, the compensation awarded by the Tribunal by invoking the personal accident cover policy is not sustainable, and the award passed by the Tribunal is hereby set aside.

10. In the result, this Civil Miscellaneous Appeal is allowed. No cost.

09.02.2024

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

To:

1. The Sub Judge,
   Motor Accident Claims Tribunal,
   Karaikkal.

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

K. RAJASEKAR, J.

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