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C.M.A.(MD)No.655 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 21.12.2023

Pronounced on : 13.03.2024

CORAM:

THE HONOURABLE MR.JUSTICE P.VADAMALAI

C.M.A.(MD)No.655 of 2021

and

C.M.P(MD)No.6236 of 2021

National Insurance Company Ltd.,
Through Branch Manager,
No.175-A Great Cotton Road,
Thoothukudi District.

... Appellant/Respondent

Vs.

M.Pichandi

... Respondent/Claim Petitioner

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1998, to set aside the award passed by the judgment and decree made in M.C.O.P.No.242 of 2017, dated 30.07.2020 on the file of the Motor Accident Claims Tribunal / Chief Judicial Magistrate, Thoothukudi and allow this appeal.

For Appellant : Mr.N.S.Ramakrishna Dass

For Respondent : No Appearance



JUDGMENT

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This Civil Miscellaneous Appeal is preferred against the award dated 30.07.2020 passed in M.C.O.P.No.242 of 2017 by the Motor Accident Claims Tribunal/Chief Judicial Magistrate, Thoothukudi.

2. The respondent in M.C.O.P.No.242 of 2017 is the appellant herein. The petitioner/claimant is the respondent herein.

3. For the sake of convenience, the parties arrayed in M.C.O.P.No. 242 of 2017 is adopted hereunder.

4. The brief facts of the case:

On 29.12.2016 at about 04.30 p.m. the petitioner was riding his two wheeler bearing registration number TN 69 AA 6507 along the Tirunelveli - Thoothukudi national highway near Maravanmadam and the vehicle capsized and the petitioner sustained injuries. He took treatment at private hospital. The vehicle was insured with the respondent/ Insurance Company and hence, he filed the claim petition seeking compensation of Rs.7,00,000/-.



5. The respondent/Insurance Company objected the claim petition by contending that the petitioner is owner cum rider and there is no F.I.R. registered. The accident was taken place on 29.12.2016, but the petitioner lodged a petition before the police only on 13.01.2017. For owner risk, only Rs.50/- was collected towards Compulsory PA Cover and if so, only death occurs Rs.1,00,000/- will be given and there is no other benefit to the owner-cum-rider of the vehicle by whose negligence the accident took place. Therefore, the petitioner is not entitled to any claim from the respondent /Insurance Company.

6. Before the Tribunal both side adduced oral and documentary evidence. On the side of the petitioner, P.W.1 was examined and Ex.P.1 to Ex.P.9 were marked. On the side of the respondent, R.W.1 was examined and Ex.R.1 was marked and Ex.X.1 was marked. After hearing both and after considering the evidence, the Tribunal has held that the accident was taken place due to the rash and negligent riding of the petitioner and awarded compensation directing the respondent to pay Rs.1,00,000/-.

7. Aggrieved by the said award, the respondent/Insurance Company has preferred this Civil Miscellaneous Appeal.



8. The learned counsel appearing for the respondent/Insurance Company has mainly argued that the accident was occurred due to the negligence of the petitioner and no F.I.R. was registered. The Tribunal also held that the accident was taken place due to negligence on the part of the petitioner, but wrongly passed award for Rs.1,00,000/- which is against law. As per policy principle, if the petitioner paid Rs.50/- the above said sum can be awarded only in case of death. The petitioner took treatment for the injuries sustained, it is doubtful whether the petitioner sustained injuries in the accident since no F.I.R. is registered. The learned counsel relied on the decision of the Hon'ble Supreme Court reported in **(2009) 13 SCC 710 (Ningamma and Another vs. United India Insurance Company Limited)**.

9. No contra argument put forth. Though the respondent's name was printed in cause list, no steps were taken by the respondent.

10. On perusal of records, it is clear that the Tribunal held that the accident was taken place due to negligence on the part of the petitioner. It is true that no F.I.R was registered and upon the petition of the petitioner, the concerned police only registered CSR. It is the main case of the respondent/Insurance Company that since the petitioner paid



Rs.50/- towards PA Cover, the petitioner is entitled to Rs.1,00,000/- in case of death and for sustaining injuries there is no amount liable to be paid as per policy condition. The policy condition was marked as Ex.R.1. There is no contra evidence put forth by the petitioner. As per Section 163A of the Act, compensation only can be awarded in case of death.

11. The respondent/Insurance Company vehemently contended that the petitioner sustained only simple injuries. On perusal of award, it is clear that the permanent disability of the petitioner is 43%. There is no material to show that due to the said 43% permanent disability, the petitioner lost his earning capacity. The claim petition has been filed under Section 163A of MV Act. The insurance policy is a package policy and the petitioner sustained injuries on his own negligence and as per Ex.R.1 the policy being two wheeler policy, whether it is a package or Act policy there will be no cover for the rider of the two wheeler. A premium of Rs.50/- is covered for the owner in case of death for Rs.1,00,000/-. In the above facts and circumstances, the claim petition is not maintainable and the award passed by the Tribunal is not sustainable. Therefore, the compensation awarded by the Tribunal is held incorrect and the same is liable to be set aside.



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12. In the result, this Civil Miscellaneous Appeal is allowed and the award dated 30.07.2020 passed in M.C.O.P.No.242 of 2017 by the Motor Accident Claims Tribunal/Chief Judicial Magistrate, Thoothukudi is set aside. No costs. Consequently, connected Miscellaneous Petition is closed.

13.03.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
VSD

To

1.The Motor Accident Claims Tribunal /
Chief Judicial Magistrate,
Thoothukudi.

2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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P.VADAMALAI, J.

VSD

Pre - Delivery Judgment made in
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