BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 21.12.2023

Pronounced on : 21.03.2024

CORAM:

THE HONOURABLE MR.JUSTICE P.VADAMALAI

C.M.A(MD)Nos.155 and 162 of 2021
and
C.M.P(MD)Nos.1349 and 1369 of 2021

Legal Manager,
Reliance General Insurance Company Ltd.,
2nd Floor, P.L.A.Kanagu Towers,
15A, 11th Cross,
Thillai Nagar,
Trichirapalli – 18. ... Appellant in both CMAs

Vs.

Logasundari ...Respondent in C.M.A(MD)No.155 of 2021

Minor Omprakash ...Respondent in C.M.A(MD)No.162 of 2021

(Minor respondent represented by his mother and guardian Logasundari)

PRAYER in C.M.A(MD)No.155 of 2021: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the judgment and decree dated 07.09.2019 passed in M.C.O.P.No.1117 of 2018 on the file of the Special District Judge/Motor Accident Claims Tribunal, Thanjavur by allowing this appeal.

PRAYER in C.M.A(MD)No.162 of 2021: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the judgment and decree dated 01.08.2019 passed in M.C.O.P.No.1118 of 2018 on the file of the Special District Judge/Motor Accident Claims Tribunal, Thanjavur by allowing this appeal.

For Appellant : Mr.V.Sakthivel in both CMAs
For Respondent : Mr.N.Sudhagar Nagaraj in both CMAs

COMMON JUDGMENT

The Civil Miscellaneous Appeal No.155 of 2021 is preferred against the award dated 07.09.2019 passed in M.C.O.P.No.1117 of 2018 on the file of the Special District Judge/Motor Accident Claims Tribunal, Thanjavur.

2. The Civil Miscellaneous Appeal No.162 of 2021 is preferred against the award dated 01.08.2019 passed in M.C.O.P.No.1118 of 2018 on the file of the Special District Judge/Motor Accident Claims Tribunal, Thanjavur.

3. The respondent/Insurance Company in claim petitions in M.C.O.P.Nos.1117 of 2018 and 1118 of 2018 has filed the respective appeals.

4. The petitioner/claimant in both petitions filed the claim petition in M.C.O.P.Nos.1117 of 2018 and 1118 of 2018.

5. **The brief facts of the case:**

On 17.08.2018 at about 4.00 p.m. the petitioner/claimant in both petitions along with one Harish travelled in a car bearing registration number TN 49 BF 7733 belonged to the petitioner/claimant Tmt.Logasundari was driven by her husband/driver Mariappan in a rash and negligent manner along the Thuvarankurichi - Trichy National Highway in front of Mamalaiyan hotel dashed against center median and the accident took place. Due to the impact, the petitioners/claimants sustained grievous injuries in various parts of the body and they took treatment as inpatient and incurred huge medical expenses. Hence, the petitioners/claimants filed M.C.O.P.Nos.1117 of 2018 and 1118 of 2018 seeking compensation of Rs.20,00,000/- each.

6. The respondent/Insurance Company objected the claim petition by contending that the petitioners being the owner and one Harish travelled in the car, which was driven by the driver in a rash and negligent manner and invited the accident. So, the petitioner/owner's

claim petition is not maintainable as she is not a third party. The petitioner/owner/insured, who had entered into a contractual relationship with the Insurance Company as per policy terms and conditions. The petitioner/owner has travelled only as an occupant and not in the status of a third party. The another injured has travelled as a gratuitous passenger, in the offending vehicle. So, the Insurance Company is not liable to pay the compensation.

7. Before the Tribunal both sides adduced oral and documentary evidence in both petitions.

8. In M.C.O.P.No.1117 of 2018, on the side of the petitioner P.W.1 and P.W.2 were examined and Ex.P.1 to Ex.P.12 were marked. On the side of the respondent, R.W.1 was examined and no exhibit was marked. After hearing both the sides and after considering the evidence, the Tribunal has held that the accident took place due to the rash and negligent driving of the driver of the car and awarded compensation directing the respondent to pay the compensation of Rs.2,46,806/- with interest.

9. In M.C.O.P.No.1118 of 2018, 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 no witness was examined and no exhibit was marked. After hearing both and after considering the evidence, the Tribunal has held that the accident took place due to the rash and negligent driving of the driver of the car and awarded compensation directing the respondent to pay the compensation of Rs.24,850/- with interest.

10. Aggrieved by the said award, the respondent/Insurance Company has preferred the appeals in C.M.A(MD)No.155 of 2021 and C.M.A(MD)No.162 of 2021.

11. Heard both sides and perused the records in these Civil Miscellaneous Appeals.

12. The learned counsel appearing for the appellant/Insurance Company has argued that the claimant Logasundari is the owner of the car TN 49 BF 7733, which was driven by her husband Mariappan in a rash and negligent manner and caused the accident. The claimant Logasundari sustained injuries. The claimant Logasundari has not travelled as a passenger, she is only an occupant. Moreover, the owner

has taken third party insurance policy only and the claimant paid only Rs.100/- towards PA Cover for owner. This is disclosed from the policy of the car which was marked as Ex.P.4. So, the claimant is entitled to compensation in the event of death at Rs.2,00,000/- or bodily disablement, that too from the appropriate Forum, not from the MACT.

13. The learned counsel further argued that in this case the claimant Logasundari has not sustained any grievous injuries and has not sustained any disablement or permanent disability of 100%. However, the Tribunal has awarded compensation of Rs.2,46,806/-, which is against the principle of law and policy. So, the claimant Logasundari is not entitled to any compensation.

14. He further contended that as the claimant minor Om Prakash is a gratuitous passenger, he is also not entitled to any compensation. In that claim petition, the claimant has not added the owner of the car as a party. Even if any compensation he is entitled, the appellant/Insurance Company can pay and recover the compensation. So, the claim petitioners are not entitled to any compensation and the impugned award passed by the Tribunal may be set aside. In support of his argument, the learned counsel for the appellant/Insurance Company relied on the

judgment passed in **C.M.A.No.2434 of 2019 dated 02.09.2020 (M/s.The Cholamandalam MS General Insurance Company Limited vs. Ramesh Babu)** by the High Court of Madras.

15. Per contra, the learned counsel for the respondents/claimants submitted that the respondents/claimants has taken package policy and paid Rs.100/- towards PA Cover for owner driver. The owner of the car travelled as an occupant and as per terms of insurance policy the appellant/Insurance Company is liable to pay the compensation. The Tribunal has elaborately discussed the matter and passed award directing the respondent to pay compensation to the claimants as the MV Act is benevolent Act. In support of his submission, the learned counsel for the respondents/claimants relied on the decision of the Hon'ble Supreme Court reported **2017(1) TN MAC 289 (SC) (Manuara Khatun and Ors. vs. Rajesh Kr. Singh and Ors.)**

16. On hearing both and on perusal of records, it is clear that the accident took place due to rash and negligent driving of the car TN 49 BF 7733. The respondent/claimant Logasundari is the owner of the said car and her husband Maripappan drove the car at the time of accident and invited the accident himself by dashing median of the road

and capsized the vehicle. The claimants travelled in the car, not as passengers. There is no dispute in it. It is vehemently contended by the appellant/Insurance Company that the owner of the car, being an occupant cannot claim compensation before MACT, moreover, she paid only Rs.100/- towards PA Cover, so she can claim before the Appropriate Forum that too only Rs.2,00,000/- for death or compensation to be fixed upon the percentage of permanent disablement.

17. On perusal of counter filed by the appellant/Insurance Company specifically contended that "*the petitioner's claim for compensation is not maintainable before this forum as petitioner is not a third party. The petitioner is nothing but the insured, who had entered into a contractual relationship with the respondent as per policy terms and conditions. Therefore, the petitioner should make any of her claims only through this respondent office and if her claims are not attended properly can take resort to consumer forum only and not before this tribunal. Even though it is averred by the petitioner that she was not driving the vehicle but travelled only an occupant at the time of accident, will not give her the status of a third party and the claim is to be dismissed.*" But, in this case Ex.P4 – Insurance Policy is a package policy. The insured also paid Rs.100/- towards PA Cover for owner

driver.

18. In this case, the personal accident coverage policy has been agreed by the parties and if so, Rs.2,00,000/- is fixed under personal accident coverage policy. But ,the Tribunal awarded compensation of Rs.2,46,806/-. The claimant has not claimed as death claim and she claimed compensation for injuries. The claimant has not produced any material to show her permanent disablement. In the impugned order, the Tribunal held that the claimant sustained fracture in her left shoulder collar bone and she took treatment from 18.08.2018 to 20.08.2018 only for two days. As per Ex.P.11, partial permanent disability is given as 27%, the Tribunal held as 24% partial permanent disability. There is no material to show this kind of disability would be taken as 100% permanent disablement of the claimant. The learned counsel for the appellant/Insurance Company vehemently contends that if the involved vehicle had having package policy with personal accident cover and owner/driver is entitled to Rs.2,00,000/- compensation in case of death in the accident.

19. In **"Vasuki and Anr /v/ Santhi and Anr" case reported in (2021) 16 Supreme Court Cases, 730**, the Hon'ble Supreme Court held as, "*In terms of personal accident coverage for the owner and driver, the liability of the insurance compensation is unlimited as a reading of the policy does not show any limit on the quantification of the liability……….The policy is categorical, indemnifying the personal accident claim of the owner and driver. There is no cap on the amount of compensation payable by the insurance company in the policy. There is no condition in the policy that tariff fixed by the Indian Motor Tariff would be applicable in respect of personal accident claim. ….The insurance company shall pay the amount of compensation as awarded by the MACT.*"

20. In the said case, the claim was sought for the death of son in accident and the owner of the involved vehicle was the mother and the driver was the father wherein the Hon'ble Supreme Court made order as above.

21. In the case relied on by the Appellant/Insurance Company in C.M.A.No.2434 of 2019 passed by this Court, in which, the accident took place due to negligent act of the owner, who drove the vehicle and invited the accident. But in this case, the driver is not the owner of the vehicle. Hence, the abovesaid judgment is not applicable to the facts of

this case.

22. The petitioner/claimant minor Om Prakash in M.C.O.P.No. 1118 of 2018 travelled in the car as an occupant. The Tribunal awarded compensation of Rs.24,850/- for the injuries sustained by him in the accident. In the case of accident claims, the Tribunal has to adopt settled principles while awarding compensation favouring the claimants than the insurance companies. In other respect, there is no dispute in respect of arriving compensation by the Tribunal.

23. In this case, the driver is the husband of the owner Tmt.Logasundari. The owner travelled in the car as an occupant. Minor Omprakash is their son. Admittedly, the owner paid premium of Rs.100/- towards PA Cover. As held by the **Hon'ble Supreme Court in (2021) 16 Supreme Court Cases, 730** *in terms of personal accident coverage for the owner and driver, the liability of the insurance compensation is unlimited and the policy is categorical, indemnifying the personal accident claim of the owner and driver and there is no cap on the amount of compensation payable by the insurance company in the policy. Therefore, the insurance company shall pay the amount of compensation as awarded by the Tribunal.* Thus, in the above facts and circumstances, I concur with the argument of the learned counsel for the

claimants that the claimants are entitled to compensation as awarded by the Tribunal.

24.Therefore, the compensation awarded by the Tribunal in M.C.O.P.Nos.1117 of 2018 and 1118 of 2018 are held correct and the same are not liable to be set aside.

25. In the result,

(i) The Civil Miscellaneous Appeal in C.M.A(MD) No.155 of 2021 is dismissed and the award dated 07.09.2019 passed in M.C.O.P.No.1117 of 2018 on the file of the Special District Judge/Motor Accident Claims Tribunal, Thanjavur is confirmed. No costs. Consequently, connected Miscellaneous Petition is closed.

(ii) The Civil Miscellaneous Appeal in CMA(MD)No.162 of 2021 is dismissed and the award dated 01.08.2019 passed in M.C.O.P.No.1118 of 2018 on the file of the Special District Judge/Motor Accident Claims Tribunal, Thanjavur is confirmed. No costs. Consequently, connected Miscellaneous Petition is closed.

21.03.2024

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

To

1.The Special District Judge/
Motor Accident Claims Tribunal,
Thanjavur.

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

P.VADAMALAI, J.

VSD

Pre - Delivery Judgment made in
C.M.A(MD)Nos.155 and 162 of 2021
and
C.M.P(MD)Nos.1349 and 1369 of 2021

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