BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 24/04/2024

CORAM

The Hon'ble Mr.Justice **G.ILANGOVAN**

CMA(MD)No.986 of 2021
and
CMP(MD)No.9280 of 2021

Cholamandalam M.S General
Insurance Company Ltd.,
No.5, 1st Floor, Annai Plaza,
Kovai Road,
Opp. To AKC Petrol Pump,
Karur-639 002.
Through its Branch Manager : Appellant/2nd Respondent

Vs.

1.A.Manoharan : 1st Respondent/Petitioner
2.Veerakumar : 2nd Respondent/1st Respondent

PRAYER:-Civil Miscellaneous Appeal is filed under section 173 of the Motor Vehicles Act, 1988, to set aside the judgment and decree passed in MCOP No.72 of 2016 on the file of the Motor Accident Claims Tribunal (Chief Judicial Magistrate), Tenkasi, dated 07/11/2019.

For Appellant : Mrs.K.R.Shivashankari

For 1st Respondent : Mr.M.P.Senthil

For 2nd Respondent : No appearance

JUDGMENT

This Civil Miscellaneous Appeal is filed seeking to set aside the judgment and decree, dated 07/11/2019 passed in MCOP No.72 of 2016 by the Motor Accident Claims Tribunal, (Chief Judicial Magistrate), Theni.

2.**The facts in brief**:-

On 14/04/2016 at about 08.30 am, the petitioner and his relatives were returning in a vehicle bearing registration No.TN-60-K-9333, when he was nearing Cumbam road, a dog suddenly crossed the road, as a result of which, the driver of the vehicle lost control and the vehicle hit on the tamarind tree standing on the right side of the road, in which the claimant sustained injuries.

3.Over the occurrence, a case in Crime No.164 of 2016 for the offences under sections 279 and 337 IPC was registered against the first respondent by the Veerapandi Police Station. The vehicle belongs to the claimant and insured with the appellant herein. Since he sustained injuries, he is entitled for compensation amount of Rs. 3,00,000/-.

4.That was resisted by the appellant Insurance Company stating that TN-60-K-9333 belongs to the claimant. He is also the owner of the vehicle. Since the occurrence took place because of the negligence on the part of his own rider, the petition is not maintainable. As per the policy document, he has paid Rs.1,000/- for personal accident coverage for owner-cum-driver. He is entitled for contractual amount only in case of permanent disability or death. So, they have to approach the Insurance Company for claiming contractual amount.

5.The Tribunal recorded a finding that the occurrence took place because of the rash and negligent driving on the part of the first respondent and not on the part of the 2nd respondent. It is an inevitable accident. As per the policy premium, Rs.50/- was paid as for the paid driver. Regarding the owner-cum-driver, personal accident coverage is Rs.2,00,000/- and premium amount of Rs.100/- was paid. Relying upon that contract, the Tribunal concluded that there is a personal accident coverage. Premium has been paid. So, he is entitled for the compensation. Regarding the compensation, it arrived at Rs.1,93,108/-.

6.Against which, this Civil Miscellaneous Appeal is preferred.

7.Heard both sides.

8.Regarding the personal accident coverage, law is more or less now well settled. That can be claimed in case of death or permanent disability. But when nothing happened, in the absence of any death or permanent disability, the claimant cannot sustain the petition before the Tribunal.

9.The learned counsel appearing for the appellant would straightaway rely upon the terms, which reads as under:-

> "***IMT 17.PERSONAL ACCIDENT COVER TO PAID DRIVERS, CLEANERS AND CONDUCTORS: (Applicable to all classes of vehicles)***
>
> *In consideration of the payment of an additional premium, it is hereby understood and agreed that the insurer undertakes to pay compensation on the scale provided below for bodily injured as hereinafter defined sustained by the paid driver/cleaner/conductor*

in the employ of the insured in direct connection wit the vehicle insured whilst mounting into dismounting from or travelling in the insured vehicle and caused by violent accidental external and visible means, which independently of an other cause shall within six calender months of the occurrence of such injury result in :-

Details of injury	*Scale of Compensation*
i) Death	*100%*
ii)Loss of two limbs or sight of two eyes of one limb and sight of one eye.	*100%*
iii)Loss of one limb or sight of one eye.	*50%*
iv)Permanent Total Disablement from injuries other than named above	*100%*

10.Reading of this terms ad conditions of contract as well as IMT 17, it is clear that only in case of death or permanent disability, the claimant can sustain the petition.

11.Now let us see whether any permanent disability is suffered by the claimant and whether it is proved before the Tribunal.

12.The claimant namely PW1 has stated that he has suffered fracture on the head region. He did not suffer from any fits. He took treatment for about one week as inpatient in Theni Medical College Hospital and then shifted to N.R.T Hospital, Thei. Now he is unable to carry on his daily routine life. He required one Assistant. Because of the head injury, he could not concentrate on the business. But no medical examination was undertaken to prove the nature of the injuries and disability suffered.

13.In the discharge summary, the following injuries were noted:-

> "*(1) A deep cut injury on the forehead region and abrasion on the face.*
>
> *(2)He underwent ENT Nero Ortho Doctors opinion.*"

14.So there was a facture on the forehead. Apart from that, no follow up action was taken to assess the disability. In the absence of any medical records or medical opinion that the claimant suffered permanent disability, now he cannot claim compensation in view of IMT 17 terms of the contract.

15.The learned counsel appearing for the appellant apart from the above said issue would rely upon the judgment of the Coordinate Bench of this Court in **Divisional Manager, TATA AIG General Insurance Co. Ltd., Vs. A.C.Jagadeean [2022(1)TN MAC 521]** by following the judgment of the Hon'ble Supreme Court in ***Ramkhiladi Vs. United India Insurance Company (2020(1)TN MAC 1 (SC)],*** has observed that section 163-A of the Motor Vehicles Act will apply only in case of the third party liability and it will not apply to the owner-cum-insured.

16.Per contra, the learned counsel appearing for the 1st respondent by relying upon the judgment of this court passed in ***CMA(MD)No.2859 of 2018, dated 20/12/2018 (United India Insurance Company Ltd., Karaikal, represented by its Branch Manager Vs. Kannaiyan)*** would submit that since there is a personal accident coverage that amount must be ordered to be paid, which was rightly done by the Tribunal.

17.But reading of the order passed in CMA(MD)No.2859 of 2018 does indicate that there was permanent disability and so direction was issued. But, here as mentioned above, it is a contractual terms between the insured and the insurer. Terms must be strictly complied. In the absence of any concrete proof that because of the accidental injuries the claimant suffered permanent disability, he cannot invoke the jurisdiction of the Motor Vehicles Act to claim the compensation.

18.On that sole ground, the award passed by the tribunal is liable to be set aside. Accordingly, it is set aside.

19.In the result, this Civil Miscellaneous Appeal is **allowed**. The judgment and decree, dated 07/11/2017 passed in MCOP No.32 of 2016 by the Motor Accident Claims Tribunal/Chief Judicial Magistrate, Theni is set aside. No costs. Consequently, connected Miscellaneous Petition is closed.

24/04/2024

Index:Yes/No
Internet:Yes/No
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To,

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

2.The Section Officer,
ER/VR Section,
Madurai Bench of Madras High Court,
Madurai.

G.ILANGOVAN, J

er

CMA(MD)No.986 of 2021

24/04/2024