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CMA.(MD)No.89 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 17/04/2024

CORAM

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

CMA (MD) No.89 of 2021

and

CMP (MD) No.825 of 2021

Branch Manager,
Oriental Insurance Company Limited,
1548, Tenkasi Road,
Rajapalayam,
Virudhunagar District-626 117. : Appellant/Respondent

Vs.

R.Singaraj : Respondent/Petitioner

PRAYER:-Civil Miscellaneous Appeal is filed under section 173 of the Motor Vehicles Act, 1988, to set aside the decree and judgment, dated 09/09/2020 made in MCOP No.199 of 2019 by the Motor Accident Claims Tribunal-cum-Chief Judicial Magistrate, Srivilliputhur.

For Appellant : Mr.E.Chandrasekaran

For Respondent : Mr.M.Jothi Bashu

JUDGMENT

This Appeal is filed seeking to set aside the judgment and decree, dated 09/09/2020 made in MCOP No.199 of 2019 by the Motor Accident Claims Tribunal-cum-Chief Judicial Magistrate, Srivilliputhur.



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2. The facts in brief:-

On 29/11/2018 at about 05.45 am, the petitioner was riding his two wheeler bearing registration No.TN-84-F-6558 on the Mill ending road to Vanniyampatti. At that time, the Lorry bearing registration No.TN-67-E-0545 was driven by its driver in a rash and negligent manner and hit the petitioner. He sustained injuries all over his body, which are grievous in nature. He was taken to the hospital and underwent surgery for his fracture. Treatment continued in various hospitals also. Ultimately he was discharged on 16/03/2019. Claiming compensation of Rs.1,00,000/-, he filed the petition.

3.That was resisted by the respondent stating that the offending vehicle is not arrayed as party and the petitioner has to approach the Insurance Company by submitting proper application. The Tribunal has no power to enquire the matter.

4.Before the Tribunal, on the side of the claimant, 2 witnesses were examined, 5 documents marked. On the side of the Insurance Company, no oral and documentary evidence was adduced.



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5.The Tribunal after considering the evidence on record concluded that the petitioner is entitled for compensation of Rs.1,00,000/- as per the terms of the contract entered between the Insurance Company and himself.

6.Against which, this Civil Miscellaneous Appeal is preferred by the Insurance Company.

7.Heard both sides.

8.The learned counsel appearing for the appellant would draw the attention of this court to the terms and conditions of contract of the Insurance, which reads as under:-

"Subject otherwise to the terms exceptions conditions and and limitations of this Policy, the Company undertakes to pay compensation as per the following scale for bodily injured/death sustained by the owner-driver of the vehicle indirect connection with the vehicle insured whilst mounting into-dismounting from or traveling in the insured vehicle as a co-driver, caused by violent accidental external and visible means which independent of any other



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cause shall within six calendar months of such injury result in

Nature of injury	Scale of compensation
(i) Death	100%
(ii) Loss of two limbs or sight of two eyes or one limb and sight of one eye.	100%
(iii) Loss of one limb or sight of one eye	100%
(iv) Permanent total disablement from injuries other than named above	100%

1. Provided always that,

(A) At the compensation shall be payable under only one of the items (i) to (iv) above in respect of the owner-driver arising out of any one occurrence and the total liability of the insurer shall not in the aggregate exceed the sum of Rs.15 lac during any one year of the policy period.

(B) No compensation shall be payable in respect of death or bodily injury directly or indirectly wholly or in part arising or resulting from or traceable to



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I.Intentional self-injury, suicide or attempted suicide physical defect or infirmity or

II.an accident happening whilst such person is under the influence of intoxicating liquor or drugs.

(C)Such compensation shall be payable directly to the insured or to his/her legal representatives whose receipt shall be the full discharge in respect of the injury to the insured.

2.This cover is subject to
(a)the owner-driver is the registered owner of the vehicle insured herein.
(b)the owner-driver is the insured named in this policy.
(c)the owner-driver holds an effective driving license, in accordance with the provisions of Rule 3 of the Central Motor Vehicles Rules, 1989, at the time of the accident."

and would contend that the petitioner can claim the compensation under the provisions of the personal accident coverage only in case of total disability. Here, except producing the medical records of treatment, no other evidence was let in to show the total disability.



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9. Apart from that, it is also contended that the Tribunal has no power to go into the issue in respect of the personal accident coverage between the insured and the Insurance Company. I am not going into that aspect now for the simple reason that the matter can be remitted back to the Tribunal granting liberty to the respondent herein to produce the evidence to show as to whether there is any permanent disability because of the accidental injury.

10. The documents *prima facie* indicate that there was deformation on the leg. Whether it caused any permanent disability must be established by the claimant by producing the medical evidence. For that purpose, the learned counsel appearing for the claimant would submit that the matter may be remitted back to the Tribunal granting opportunity to him to produce the medical evidence.

11. Considering the nature of the injuries sustained by the respondent herein, the matter is remitted back to the Tribunal for consideration whether there is any total permanent disability due to the accidental injury. If it is so, what amount the claimant is entitled to?



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12. Accordingly, this Civil Miscellaneous Appeal is **allowed**. Order is set aside. The matter is remitted back to the Tribunal. The parties are at liberty to lead additional evidence. The Tribunal may dispose of the matter on its own merits in accordance with law, within a period of three months from the date of appearance of the parties. No costs. Consequently, connected Miscellaneous Petition is closed.

17/04/2024

Index:Yes/No
Internet:Yes/No
er

To,

1. The Motor Accident Claims Tribunal-
cum-Chief Judicial Magistrate,
Srivilliputhur @ Virudhunagar District.
2. The Section Officer,
ER/VR Section,
Madurai Bench of Madras High Court,
Madurai.



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G.ILANGOVAN, J

er

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