BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 25.07.2024

Pronounced on : 14.10.2024

CORAM

THE HONOURABLE MR.JUSTICE **G.ILANGOVAN**

C.M.A(MD)No.1280 of 2023
and
C.M.P(MD)No.17150 of 2023

ICICI Lombard General Insurance Company Limited,
ICICI Lombard House, 414, Veera Savarkar Marg,
near Siddi Vinayak Temple,
Prabhadevi, Mumbai. ... Appellants / Petitioners

Vs.

1.T.Rameshkumar ... 1st Respondent / Claimant

2.R.Teenukumar ... 2nd Respondent / 1st Respondent

PRAYER :-

This Civil Miscellaneous Appeal is filed under Section 173 Motor vehicles Act to call for the records pertaining to the Fair order passed by the Motor Accident Claims Tribunal / Special Subordinate Judge, Trichirappalli, in MCOP No.374 of 2016 dated 13.02.2023, set aside the same by allowing the appeal.

For Appellant : Mr.P.Pethurajesh

For R1 and R2 : Mr.R.Sundar

JUDGMENT

This Civil Miscellaneous Appeal is filed to call for the records pertaining to the Fair order passed by the Motor Accident Claims Tribunal / Special Subordinate Judge, Trichirappalli, in MCOP No.374 of 2016 dated 13.02.2023, set aside the same by allowing the appeal.

2. The case of the prosecution is that on 22.03.2014 at about 01.10 p.m., the petitioner along with his brother namely one Kishore was travelling in a two wheeler bearing registration No.TN 81 3585 from West to East direction and when he was nearing the place of occurrence, a vehicle which was proceeding on same direction slowed down the speed without any indication. As a result of which, the petitioner skit, fell down and sustained injuries. He was taken to the Front Line Hospital, Trichirappalli, took treatment from 22.03.2014 to 02.04.2014. Because of the accidental injuries, he could not continue his work as before. Claiming compensation amount of Rs.10 Lakhs, claim application was filed.

3. That was resisted by the insurance company and the first respondent vehicle owner contending that it is a self accident and out of his own negligence, he skit, fell down and sustained injuries. It has been stated by him that another vehicle was involved in the accident. After 13 days FIR was registered.

4. At the conclusion of the enquiry, the Tribunal found that the petitioner borrowed the vehicle from the first respondent who is the owner of the vehicle and it is a self accident. But however, the Tribunal went on to assess the compensation stating that the petitioner must be construed as a person who is covered under the personal accident coverage, since he stepped into the shoes of the first respondent. Finding that there is a total permanent disability, it awarded Rs.1 Lakh as mentioned in the insurance policy along with interest. Against which this appeal is preferred by the insurance company.

5. Heard both sides.

6. Only short point arises for consideration as to whether the claimant is entitled for compensation and covered under the category of owner cum driver, mentioned in the policy.

7. The story that the third party vehicle was involved in the occurrence and the claimant accidentally hit that vehicle back and sustained injury is not substantiated. The Tribunal found that it is a self accident arose out of his own negligence. There is no cross appeal by the claimant. That apart the findings requires no interference. Regarding the liability only, the appeal was heard. The Tribunal has recorded a finding that it is a package policy covering the owner cum driver. Perusal of Ex.P3 Policy Certificate reads that the third party liability was incurred and premium amount of Rs.422/- was paid. The personal accident coverage for owner cum driver was paid as Rs. 50/- as premium. Liability premium was paid as Rs.472/-. Total package policy premium amount of Rs.1035/- was paid.

8. Eventhough, it is contended by the appellant that the person who borrowed the vehicle from the insured is not entitled for any coverage, but the conditions and limitations of driver's clause is against the argument.

"Driver's Clauses : Any person including the insured : Provided that a person driving holds an effective Driving License at the time of the accident and is not disqualified from holding or obtaining such a license. Provided also that the person holding an effective Learner's License may also drive the vehicle and that such a person satisfies the requirements of Rule 3 of the Central Motor Vehicles Rules, 1989."

9. Reading of the clause specifies that the borrower of the vehicle from the insured is covered with the policy. So the insurance company cannot disown the liability.

10. Next question as to whether any total permanent disability has caused. There is no finding of the Tribunal that there is a total permanent disability. But perusal of the assessment disability by the Medical Board attached to the Government Hospital, Tiruchirappalli, shows that only 40% of the partial permanent disability because there was tibial fracture and so there is no total permanent disability. Only in case of total permanent disability, the insurance company can be fastened with liability for the compensation amount. Only in case of total permanent disability, even the personal accident coverage can be invoked. We can refer to Section III of the Policy conditions :

"Section III - Personal Accident Cover for Owner-Driver

Subject otherwise to the terms exceptions conditions and limitations of this Policy, the Company undertakes to pay compensation as per the following scale for bodily injury/death sustained by the Owner-Driver of the vehicle in direct connection with the vehicle insured or 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 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	*50%*

Provided always that

A) 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.1 lakh during any one period of insurance.

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 (a) intentional self injury suicide or attempted suicide physical defect or infirmity or*

(b) 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.

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.

11. As mentioned above, the claimant did not suffer any total permanent disability. So the personal accident coverage also is not available. At the conclusion of the clarification, learned counsel for the appellant has brought to the notice of this Court to the judgment of the Hon'ble Division Bench of this Court made in C.M.A.No.1395 of 2021. Eventhough, in this matter, the claimant is not the owner cum driver of the vehicle but he claims on the ground that he is the third party, which is negatived. Even in case of

personal accident coverage as mentioned above, the injuries are not permanent. So he is not entitled even for personal accident coverage. So the judgment referred on the side of the appellant is relevant to the present case.

12. In view of the above submission, the insurance company is exonerated from its liability. Because it is a self accident arose out of the own negligence on the part of the claimant. Therefore, he is not entitled for any compensation.

13. Accordingly, this Civil Miscellaneous Appeal is allowed and the award passed by the Motor Accident Claims Tribunal / Special Subordinate Judge, Trichirappalli, in MCOP No.374 of 2016 dated 13.02.2023, is set aside. Consequently, connected miscellaneous petition stands closed. No costs.

14.10.2024

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

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To

1. The Motor Accident Claims Tribunal / Special Subordinate Judge,
   Trichirappalli.

2. The Section Officer, Vernacular Records Section,
   Madurai Bench of Madras High Court, Madurai.

G.ILANGOVAN, J.

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Pre-Delivery Judgment made in

C.M.A(MD)No.1280 of 2023
and
C.M.P(MD)No.17150 of 2023

14.10.2024