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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.03.2021

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

C.M.A.NO.2784 OF 2017

M/s.Iffco Tokio General Insurance Company Limited,
At Kingstone Park, 2nd Floor,
No.19/1, Ramalinga Nagar,
Woraiyur, Trichy,
Trichy District.

... Appellant/Respondent

Vs

Sivakumar

... Respondent/Petitioner

PRAYER:

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 07.10.2016 made in M.C.O.P.No.723 of 2013 on the file of the Motor Accidents Claims Tribunal, Principal District Court, Perambalur.

For Appellant : Mr.E.Rajadurai
for M/s.M.B.Gopalan Associates

For Respondent : Mr.S.Kaithamalai Kumaran

J U D G M E N T

The appeal is filed by the Insurance Company being aggrieved by the liability fixed on the Insurance Company to pay the owner of the vehicle, the compensation of Rs.4,91,209/- for fracture of clavicle bone sustained by him in the road accident.

2.According to the claim petition, on 02.09.2013, at about 03.30 p.m., when the brother of the claimant Sivashankar was driving Indica Vita car bearing Registration Number TN 48 U 2426, owned by the claimant Sivakumar, the vehicle met with the accident. The driver to avoid hitting a bull crossing the main road, took a sudden turn from left to right and dashed against the divider and capsized. The accident occurred due to sudden crossing of the bull in the main road. The claimant sustained



lacerated wound, fracture of clavicle left and multiple soft tissue injuries. The claim petition was filed seeking compensation of Rs.16,00,000/- against the owner of the car and its insurer.

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3. The claim petition was resisted by the Insurance Company on the ground that the Insurance Company is not liable to pay the claimant for the alleged injury sustained in the accident. The liability of the Insurance Company is only limited to owner as per the policy terms and conditions. Under the policy coverage, the Personal Accident cover upto Rs.2,00,000/- is only in case of death or injury which are mentioned in the schedule. The nature of injury sustained by the claimant does not fall within the injury mentioned in Section 3 of the policy. Therefore, the Insurance Company is not liable to pay any compensation.

4. The Tribunal on considering the evidence awarded a sum of Rs.4,91,209/-. The plea of the Insurance Company that the owner of the vehicle not entitled for compensation was negatived by the Tribunal on the ground that the owner of the vehicle had paid premium under the package policy and therefore, he is entitled to get compensation.

5. In the appeal, it is specifically contended that as per the terms of the contract, the owner of the vehicle is entitled to get coverage only in case of injury specified in the contract. The nature of the injury sustained by the claimant does not fall within the injury mentioned in the contract. Therefore, under P.A. cover, the claimant is not entitled for any compensation. The Tribunal failed to appreciate that the owner of the vehicle is not entitled to get compensation like a third party. The liability to pay the owner/insured is limited subject to the terms of the contract.

6. Learned counsel for the appellant draws the attention of this Court to the terms of the contract and the Insurance Policy and submitted that when there is a specific term of contract between the insured and the insurer, there cannot be deviation from the terms of the contract. The insured in this case has paid additional premium under P.A. owner driver. The Insurance Company agreed to pay compensation upto Rs.2,00,000/- and the injuries for which the compensation should be paid is also mentioned under Section 3 of the contract. The injury must be either loss of two limbs or sight of two eyes or one limb or sight in one eye. In this case, the injury sustained by the claimant is clavicle fracture and fracture of right humerus. Both these injuries does not fall under the injury mentioned under the contract and therefore, the learned counsel for the appellant submitted that the Tribunal erred in awarding



compensation to the owner/insured of the vehicle, treating him as a third party claimant.

7. On perusing the records and evidence, this Court finds that there is force in the submission of the learned counsel for the appellant. The Insurance policy is marked as Ex.R4. The owner of the vehicle who is the claimant in this case has paid a sum of Rs.11,533.84p as premium. It includes Rs.100/- paid for P.A. cover. Section 3C of the insurance terms and condition reads as below:

Section 3: Personal Accident cover for Owner-Driver

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 while driving or mounting into/dismounting from the vehicle insured or whilst travelling in it 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%
(iv) Permanent fatal disablement from injuries other than named above	100%

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."

8. The Disability Certificate is marked as Ex.P21. The injuries sustained by the claimant are mentioned as below:

1. Lacerated two wounds over skin below right base of nail of thumb.
2. Aberration over left dorsum of left hand.
3. Fracture head of right humerus.
4. Fracture clavicle left.
5. Multiple soft tissue injuries.



9. The claimant as insured is entitled to get compensation only if the injury falls under any of the injury mentioned in the contract. Since the injury sustained by the claimant does not fall within the scope of P.A. cover, the award of the Tribunal, treating the claimant as third party, is erroneous and liable to be set aside. Accordingly, the appeal is allowed and the award of the Tribunal is set aside. The appellant Insurance Company is not liable to pay any compensation to the insured/owner of the vehicle, since the injury sustained by him does not fall within the category of the injury mentioned under P.A. cover of the contract. As a result, if any amount deposited by the Insurance Company, the Insurance Company is permitted to withdraw the same.

10. In the result, the award of the Tribunal is set aside and the Civil Miscellaneous Appeal is allowed. No costs.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1. The Motor Accidents Claims Tribunal,
Principal District Court,
Perambalur.
2. The Section Officer,
VR Section, High Court,
Madras-104.

CMA.NO.2784 of 2017

CP(CO)
CS/30/09/2021