



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.02.2021

CORAM:

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

C.M.A.No.973 of 2017

The Oriental Insurance Company Limited,
Rep. by its Divisional Manager having
office at First floor,
Gopal Rao Library Building,
Town Hall Road,
Kumbakonam.

...Appellant /Respondent

Vs

- 1.Boopalan
2. Rubilan
- 3.Chandrika
- 4.Kadiravan
- 5.Vikram

(Minors 4 and 5 rep. by
their respondent brother/next friend first respondent)

... Respondent/Petitioner 1 to 5

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 31.08.2016 made in M.C.O.P.No.174 of 2013 on the file of the Motor Accidents Claims Tribunal, District Judge, Karaikal District.

For Appellant : Mr.J.Chandran

For Respondents : Mr.K.Varadhakamaraj

J U D G M E N T

Heard the learned counsel for the appellant and the learned counsel for the respondents.

2. This appeal is filed by the Insurance Company assailing the award of the Tribunal on the short point that the claimants are the legal heirs of the deceased owner cum driver of the vehicle insured under them. The Tribunal erred in awarding a sum of Rs.6,84,000/-, while the terms of the contract under the



Insurance policy is restricted to the limited liability of Rs.1,00,000/- for the owner cum driver under personal accident cover.

3. To verify whether the contention raised in the appeal is correct, the insurance policy marked as Ex.P3 was perused. On perusal, this Court found that the second and third page of insurance policy not filed. Learned counsel for the appellant was asked to produce the second and third page of the Insurance policy. The same was produced today.

4. On perusing the Insurance policy, this Court finds that the New motor cycle TVS XL Super HD with Engine No.0D1NC1540719 and Chasis No. MD621BD11C1N46835 owned by one Rajendran was insured under the appellant Company on 12.11.2012. It is a package policy wherein a sum of Rs.933/- has been collected, which includes Rs.50/- for P.A cover. As per the terms of the contract, the owner cum driver is entitled for claim upto Rs.1,00,000/- in this P.A cover. As per the F.I.R and the evidence placed before this Court, Rajendran, who is the owner cum rider of the said TVS 50 had met with an accident on 19.08.2013, when he fell down while he was passing through a speed breaker. It is his own negligence, which has caused the accident. No other vehicle is involved in the accident. As owner cum driver, the legal representatives of the deceased Rajendran are entitled for the limited liability assured by the Insurance Company under the policy i.e., Rs.one lakh, in case of death. The Tribunal has failed to consider this and has awarded Rs.6,84,000/- as if it is a third party claim. Hence, the award of the Tribunal is set aside and compensation of Rs.1,00,000/- is awarded to the claimants with 7.5% interest from the date of petition till the date of realisation. The said award amount along with accrued interest shall be equally shared among the claimants 1 to 5.

5. Learned counsel for the appellant states that the entire award amount along with accrued interest being deposited in the MCOP account. If so, the claimants are permitted to withdraw the amount as awarded in this appeal and the balance amount is permitted to be withdrawn by the Insurance Company.

6. Accordingly, the Civil Miscellaneous Appeal is partly allowed. No costs.

Sd/-

Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar



Motor Accidents Claims Tribunal,
District Judge, Karaikal District.

Copy To

The Section Officer,
V.R. Section, High Court,
Madras.

+1cc to Mr.J.Chandran, Advocate, S.R.No.6440

+1cc to Mr.K.Varadhakamaraj, Advocate, S.R.No.5820

CMA NO.973 OF 2017

KV(CO)
GN(17/11/2021)