IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.02.2023

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THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN

C.M.A.No.1216 of 2018
and
CMP No.9890 of 2018

The Divisional Manager
The Oriental Insurance Company Limited
Vijayalakshmi Complex
No.32/312, 13th Street, Phase-II
Sathuvachari, Vellore. ... Appellant

..Vs..

Venugopal ...Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award and decree dated 04.03.2017, made in MCOP No.407 of 2015, on the file of the Motor Accident Claims Tribunal/ Special Subordinate Judge, Thiruvannamalai.

For Appellant	: Mr. S.Prem Chander
For Respondent	: No Appearance

JUDGMENT

This appeal has been filed by the Insurance Company being aggrieved over the liability fixed on the Insurance Company to pay the owner of the vehicle, the compensation of Rs.1,66,579/- for fracture of left radius shaft sustained by him the road accident.

2. As per the claim petition, on 29.05.2015, at about 00.40 hours, when the driver of the claimant Venugopal was driving Ambassador car bearing Registration No.TN 25 J 1683, owned by the claimant, the vehicle met with an accident. The driver of the car had driven the vehicle in a rash and negligent manner and the car lost its control and dashed against the centre median culvert on the middle of the road. The claimant sustained fracture of left radius shaft, injuries on left fore arm, left hand, frontal region and injuries all over the body. The claim petition was filed seeking compensation of Rs.5,00,000/- against the insurer of the car.

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 police terms and conditions. Under the policy coverage, the Personal Accident coverage 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 III 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.1,66,579/-. The plea of the Insurance company that the owner of the vehicle is 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 III 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 fracture of left radius shaft. This injury 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 record 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.R1. The owner of the vehicle who is the claimant in this case has paid Rs.100/- towards Personal Accident cover. Section III of the Insurance terms and conditions reads as follows:

Section III: 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/ legal representatives whose receipt shall be the full discharge in respect of the injury to the insured".

8. The Wound Certificate is marked as Ex.P3. The injuries sustained by the claimant are mentioned as below:

(i) Tenderness at the Left Forearm

(ii) An abrasion measuring 3 x 2 c.m on the left fore arm

(iii) An abrasion measuring 2 x 2 c.m at the left fore arm

(iv) A Laceration measuring 9x2x1 c.m at the frontal region.

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 Personal

Accident cover, the award of the Tribunal, treating the claimant as third party, is erroneous and liable to be 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 Personal Accident cover of the contract.

10. In the result, the Award of the Tribunal/Special Sub Court, Tiruvannamalai dated 04.03.2017 passed in MCOP No.407 of 2015 is set aside and the Civil Miscellaneous Appeal stands allowed. If the appellant/Insurance Company has deposited any award amount before the Tribunal, then they are permitted to withdraw the said deposited amount with accrued interest by filing an appropriate application. No costs. Consequently, connected Miscellaneous Petition is closed.

13.02.2023

Index:Yes/No
Speaking/Non-speaking order
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A.A.NAKKIRAN, J.

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To

1.The Special Subordinate Judge
Motor Accident Claims Tribunal, Tiruvannamalai.

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

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