IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 17.08.2015

Coram

The Hon'ble Ms.Justice K.B.K.VASUKI

C.M.A.No.3471 of 2011
and
M.P.No.1 of 2011

M/s.Bajaj Allianz General
Insurance Co. Ltd.
rep. by its Branch Manager,
GE Plaza, Airport Road,
Yarwada,Pune. ...Appellant/3rd Respondent

Vs.

1. Karthick

2. Rajanth Singh

3. M/s.Ahemdabad Bengal Roadways (P) Ltd.
rep. by its M.D. 1295/1-B,
Kepashera Village, Opp. to D.C.Office,
Near N. Floor, Delhi. ...Respondents/Petitioner, and R1, R2

This Civil Miscellaneous Appeal is filed against the award and decree, dated 18.10.2010, passed in M.C.O.P.No.491 of 2008, on the file of the Motor Accidents Claims Tribunal (Principal Sub Judge, Tirupur).

For Appellant : Mr.S.Arunkumar

For Respondent-1 : Mr.Ma.P.Thangavel

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JUDGMENT

This Appeal is filed by the third respondent/Insurance Company before the Tribunal against the award amount, mainly on the ground that the Tribunal erred in fixing the liability on it, in spite of the driver of the vehicle did not possess any valid licence at the time of the accident.

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2. For the sake of convenience, the parties are herein after referred to, as per the rank assigned in the Claim Petition.

3. The fact is that the claimant, by name Karthick, met with an accident, involving the lorry belonging to the second respondent/M/s.Ahemdabad Bengal Roadways Pvt. Ltd., driven by the first respondent/driver, by name Rajnath Singh, and insured with the third respondent/Insurance Company at the time of the accident.

4. The Claim Petition was not contested by the first respondent/Driver and second respondent/owner of the offending vehicle and it was contested only by the third respondent/Insurance Company.

5. The third respondent/Insurance Company in their counter, raised a plea that the owner of the lorry failed to comply with the mandatory duty cast upon on him under Section 134 (c) of Motor Vehicles Act, and failed to furnish details regarding the name of the driver, and particulars of his driving licence and other particulars relating to the Policy.

6. During trial, the third respondent/Insurance Company contended that the licence possessed by the first respondent/driver was fake licence and not true, and the Insurance Company in order to substantiate the same, produced Ex.R.6/Series, containing the report of the Investigator, appointed by them to go into the genuineness of the claim, Form-54, obtained from the Regional Transport Officer (R.T.O.), Kanpur, from where, the driving licence of the first respondent/Driver was allegedly obtained along with Insurance Policy by R.T.O. Licensing Authority, and a requisition for a copy of the driving licence of the first respondent.

7. The perusal of the report/Ex.R.6 reveals that R.T.O. Kanpur Nagar, Uttar Pradesh, after receiving the copy of the driving licence, verified into the factum of issuance of one such licence in their Office and found that, no such licence was issued and answered the query posed by the Investigator, by sending reply under Form-54, to the effect that the driving licence, bearing No.R/7982/KNP/(UP)02, is not issued by their Office and no records are available in that regard.

8. Basing on the said Report, it is argued that for want of any valid licence by the first respondent/driver and for

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possession of fake licence by him, the third respondent/Insurance Company cannot be mulcted and it ought to have been absolved from its liability to indemnify the owner/insured, and the Tribunal, without duly considering these aspects, fastened the liability on the Insurance Company and directed the Insurance Company to pay compensation, as per its determination.

9. Aggrieved by the same, the Insurance Company is now before this Court, by way of this Appeal.

10. In my considered view, basing on the Report/Ex.R.6, argument advanced on the side of the Insurance Company deserves serious merits and acceptance. As rightly pointed out by the learned Standing Counsel for the third respondent/Insurance Company, the competent persons, viz., driver and insured, to speak about the genuineness of the licence, having remained ex parte, adverse inference ought to have been drawn against them. It is further argued by the learned Standing Counsel that the Insurance Company, in order to absolve from any liability took arduous efforts to prove the falsity of the licence possessed by the first respondent/driver before the Tribunal.

11. This Court, considering the nature of defence raised herein, and, having regard to the falsity of the licence possessed by the first respondent/driver, as evident from Ex.R.6/Report sent by the Competent Authority, and by applying the doctrine of "Pay and Recover", is inclined to modify the award by permitting the Insurance Company to recover the amount from the second respondent/insured/owner of the offending Vehicle.

12. Insofar as the quantum is concerned, though the correctness of the same is seriously questioned before this Court, this Court, considering the age of the claimant, his occupation, pain and suffering, nature of injuries sustained by him, duration of treatment undergone by him, and medical expenses incurred by him and the extent of the permanent disability, and the impact of the same upon his earning capacity and loss of future earning power, is of the view that the quantum of compensation awarded under various heads by the Tribunal is just, reasonable and warrants no interference.

13. In the result, the Civil Miscellaneous Appeal is accordingly, allowed. The impugned award, dated 18.10.2010, passed by the Tribunal is modified, by directing the third

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respondent/Insurance Company to pay the compensation to the claimant and to recover the same from the second respondent/owner/insured, by initiating execution proceedings in this Motor Accidents Claims Tribunal Original Petition. Time for deposit of the balance award amount is four weeks from the date of receipt of the copy of this judgment. On such deposit into Court, the claimant is permitted to withdraw the entire amount with interest and costs, by filing proper Cheque Petition before the Tribunal. No costs. Consequently, connected M.P. is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

sd

To

The Motor Accidents Claims Tribunal
(Principal Subordinate Judge, Tirupur).

+1cc to Mr.Ma.P. Thangavel, Advocate, S.R.No.43417
+1cc to Mr.S. Arunkumar, Advocate, S.R.No.43692

MG(CO)
EU(29/10/2015)

HIGH COURT OF JUDICATURE MADRAS
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