IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.10.2015

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THE HONOURABLE MR.JUSTICE C.S.KARNAN

C.M.A.No.55 of 2013
and
M.P.No.1 of 2013

M/s.Bajaj Allianz General Insurance Co. Ltd.,
The Branch Office, Chennai ... Appellant/2nd Respondent

vs.

1.Muthuraman
2.Cauvery
3.Subash
4.P.Krishnan ... Respondents/Claimants & 1st Respondent

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the decree and Judgment, dated 27.02.2012, made in M.C.O.P.No.481 of 2009, on the file of the Motor Accident Claims Tribunal, Principal District Court, Villupuram.

For Appellant : Mr.N.Vijayaraghavan
For Respondents: Mr.D.S.Thirumavalavan for R1 to R3
Mr.Sounthar for R4

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J U D G M E N T

The appellant / Insurance Company has preferred the present appeal against the judgment and decree, dated 27.02.2012, made in M.C.O.P.No.481 of 2009, on the file of the Motor Accident Claims Tribunal, Principal District Court, Villupuram.

2. The short facts of the case are as follows:-
On 17.01.2008, at about 15.00 hours, when the deceased Dhanasekar was riding his TVS Champ Moped bearing registration No.TN07 2177, on Tiruvannamalai-Villupuram Main Road, near Mangalapuram Kallarai, the fourth respondent's Tata AC Mini Lorry bearing registration No.TN25 J0072, coming on the same road and driven in a rash and negligent manner, dashed against the moped. As a result, the deceased sustained grievous injuries and was admitted in Government Hospital, Villupuram.

But, in spite of medical treatment, he succumbed to his injuries. Hence, the legal heirs of the deceased filed a claim petition against the owner and insurer of the offending vehicle for compensation.

3. The appellant / Insurance Company filed a counter affidavit and resisted the claim. It was submitted that the driver of the mini lorry was not holding a valid and effective driving licence at the time of accident and he did not have the specific badge endorsement in driving licence to drive a transport vehicle. As such, only the owner of the mini lorry is liable to pay compensation and the Insurance Company cannot be held liable to pay compensation. The averments in the claim regarding age, income and occupation of the deceased and manner of accident were also not admitted. It was submitted that the claim was excessive.

4. On considering the averments of both sides, the Tribunal framed two issues. On the side of the claimants, three witnesses were examined and six documents were marked. On the side of the respondents, two witnesses were examined and six documents were marked.

5. The Tribunal, after scrutinizing the oral and documentary evidence, awarded a sum of Rs.3,39,000/- as compensation together with interest at the rate of 6% per annum.

6. Aggrieved by the said award passed by the Tribunal, the Insurance Company has filed this appeal.

7. The learned counsel for the appellant has submitted that the Tribunal erred in fastening the liability on the Insurance Company, when the insured driver of the vehicle did not possess specific badge endorsement in his driving licence to drive the insured vehicle on the date of accident. Further, the Tribunal failed to appreciate the evidences of R.W.1 (R.T.O.), R.W.2 (Insurance Officer) and Exs.R1 to R6, which clearly substantiates the fact that the insured driver did not hold effective driving license on the date of accident and thereby there was serious breach of Motor Vehicles Act and the policy. Hence, the learned counsel prayed this Court to set aside the award.

8. The learned counsel for the claimants has submitted that F.I.R., has been registered against the driver of the mini lorry. He further submitted that the eye-witnesses, namely, P.W.2 and P.W.3 have also adduced evidence to the effect that the accident had been caused by the rash and negligent driving of the driver of the mini lorry. Further, he submitted that as per Ex.P2, the mini lorry is covered under a policy of Insurance with the appellant and the driver of the mini lorry had a valid

driving licence as per Ex.P5. The deceased was aged 23 years at the time of accident and was working as an agriculturist and doing fruit business at Chennai and earning Rs.9,000/- per month, but the Tribunal had not taken this into account and erred in fixing the income of the deceased at Rs.3,000/- per month. Therefore, the learned counsel submitted that the award granted is inadequate.

9. On considering the facts and circumstances of the case and arguments advanced by the learned counsels on either side and on perusing the typed set of papers, this Court is of the view that FIR has been registered against the driver of the mini lorry and the mini lorry has been covered under a valid policy of insurance with the appellant herein. Hence, this Court holds that the appellant is liable to pay compensation to the claimants. However, on considering the evidence of R.W.1 and R.W.2, it is evident that the driver of the mini lorry did not have the requisite badge endorsement to drive the mini lorry. Hence, the appellant / Insurance Company is directed to pay the award amount on behalf of the owner and driver of the offending vehicle and recover it from them in the same proceedings.

10. At the time of admission, this Court directed the appellant Insurance Company to deposit the entire award amount with accrued interest and costs. It is open to the claimants to withdraw their apportioned share of award amount with proportionate interest and costs after filing a memo with a copy of this Judgment, subtracting the earlier withdrawal, if any, before the Tribunal.

11. In the result, this civil miscellaneous appeal is dismissed and the Judgment and Decree, dated dated 27.02.2012, made in M.C.O.P.No.481 of 2009, on the file of the Motor Accident Claims Tribunal, Principal District Court, Villupuram, is confirmed. Consequently, connected miscellaneous petition is closed. No costs.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To:

The Principal District Judge,
Motor Accident Claims Tribunal,
Villupuram.

+1 cc to Mr.D.S.Thirumavalavan Advocate sr.59990

C.M.A.No.55 of 2013
and
M.P.No.1 of 2013

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