IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:04.11.2016

CORAM

The Honourable MR. JUSTICE M.SATHYANARAYANAN

CMA.No.1325/2011

M/s.Bajaj Alliance General Insurance Co.Ltd, Anna Nagar East, Chennai – 102. ... Petitioner

Vs

1.Benetic Joseph
2.S.Sasikanth ... Respondents

Appeal filed under section 173 of the Motor Vehicle Act, 1988 against the Judgment and Decree in MCOP No.844/2007 dated 30.09.2010, on the file of the Motor Accidents Claims Tribunal, Additional District and Sessions Court, Fast Track Court, No.1, Poonamallee.

For Appellant : Mr.N.Vijayaragavan

For R1 : Mr.K.Varadhakamaraj

JUDGMENT

The Insurance Company – 2nd respondent in MCOP NO.844/2007 on the file of the Motor Accidents Claims Tribunal / Additional District and Sessions Court [Fast Track Court NO.1], Poonamallee, is the appellant herein and challenging the liability to indemnify the 2nd respondent / insured as well as the quantum of compensation, had filed the present appeal.

2 The facts leading to the filing of this appeal would disclose among other things that on 13.05.2007 at about 1.00 p.m., the 1st respondent was riding his motor cycle bearing Registration No.TN-20-AE-3920 from Poonamallee to Arakonam and when he was nearing Tirupachur curve, the car owned by the 2nd respondent, bearing Registration No.TN-02-P-8206, driven by the driver, in a rash and negligent manner, dashed against the motor cycle and as such, the 1st respondent/claimant sustained multiple and grievous injuries and in this regard, Tiruvallur Taluk Police Station also registered a case in Cr.No.240/2007 for the

offences under sections 279 and 337 IPC. The 1st respondent / claimant was taken to the Government General Hospital, Chennai, and was treated as an In-Patient between 13.05.2007 to 18.07.2007 and according to him, on account of the said accident, he cannot walk and eat properly and he is deprived of his normal day-to-day activities. Therefore, claimed compensation of a sum of Rs.4,30,000/- under various heads and however, restricted the same to Rs.2,00,000/-.

3 The 2nd respondent/Insurance Company [appellant herein] filed a counter stating that the owner of the Car bearing Registration No.TN-02-P-8206, requested for insurance cover for the period between 11.04.2007 and 10.04.2008 and was also issued with the Policy for the said period, subject to certain conditions. Since the insured had deliberately stopped payment of the premium, the policy was cancelled and necessary communication was also sent prior to the accident, i.e., as early as on 18.04.2007 and as such, in respect of the accident which took place on 13.05.2007, the Insurance Company is exonerated from indemnifying the insured and prays for dismissal of the claim petition.

4 During the course of trial, the injured claimant examined himself as P.W.1 and the doctor who assessed his disability, was examined as P.W.2 and Exs.P.1 to 8 were marked and on behalf of the respondents, RW1-Gagandeep was examined and Exs.R.1 to R.7 were marked.

5 The Tribunal, on consideration of oral and documentary evidences, had found that the dishonour of cheque issued by the insured / 2nd respondent herein on the ground of "insufficient funds" has been communicated to him and therefore, the Insurance Company is not liable to pay compensation and however, taking into consideration, the judgment of this Court reported in 2009 [2] TN MAC 86 [DB] [New India Assurance Company Limited Vs. V.Bommi and others], the Insurance Company is to pay the compensation and recover the same from the insured.

6 Insofar as the quantum of compensation is concerned, the Tribunal found as per Ex.P7-Disability Certificate coupled with the evidence of P.W.2, the 1st respondent/claimant suffered partial permanent disability at 60%. Taking into consideration the discharge summary Reports, [Exs.P.2 and P.3] as well as the Medical Report [Ex.P.4], had awarded compensation under the following heads:-

1.Loss of Income	Rs.	20,000/-
2.Transport to Hospital	Rs.	10,000/-
3.Extra Nourishment	Rs.	10,000/-
4.Medical Expenditure	Rs.	50,000/-
5.Pain and Sufferings	Rs.	20,000/-
6.Loss of future amenities for his disability	Rs.	90,000/-
Total	Rs.	2,00,000/-

with interest at 7.5% per annum from the date of claim petition till realisation.

7 The learned counsel for the appellant / Insurance Company would submit that admittedly, the cheque issued by the 2nd r / insured got dishonoured for want of sufficient funds and the communication has been sent to him much prior to the accident, as evidenced under Exs.R5 and R6 and as such, the Tribunal has committed a grave error in directing the appellant / Insurance Company to pay compensation and to recover the same from the 2nd respondent / insured. Since there was no policy covered on the date of accident, the Tribunal has fell into a grave error in giving such a kind of direction and prays for setting aside the Award on that ground alone. Insofar as the quantum, it is the submission of the learned counsel for the appellant that the Tribunal without properly appreciating the oral and documentary evidences, has awarded higher quantum of compensation and prays for setting aside the Judgment and Decree passed by the Tribunal, by allowing this appeal with cost.

8 Per contra, the learned counsel appearing for the 1st respondent / claimant would contend that the Tribunal, on correct appreciation of the oral and documentary evidences and on application of law, in the light of the above cited judgment, has rightly reached the conclusion to award compensation and also granted liberty to the appellant / Insurance company to pay the same and to recover it from the 2nd respondent / insured and prays for dismissal of the appeal.

9 This Court paid its best attention to the rival submissions and also perused the materials placed before it.

10 The primordial question that arises for consideration is whether the judgment and decree of the Tribunal, directing the appellant / Insurance Company to pay

compensation to the 1st respondent / claimant, with liberty to recover the same from the 2nd respondent / insured, is sustainable.

11 In the considered opinion of the Court, the Tribunal, on correct application of law, in the light of the judgment reported in 2009 [2] TN MAC 86 [DB] [Bommi's case] cited supra, has directed the Insurance Company to pay compensation to the 1st respondent / claimant as being a third party and recover the same from the 2nd respondent / insured and thus, protected the interest of the appellant / Insurance Company and as such, the said finding cannot be faulted with.

12 Insofar as quantum of compensation is concerned, the Tribunal found that the 1st respondent / claimant was eking out his livelihood as a Car driver and taking into consideration of the fact that he was an In-Patient on various spells, viz., from 13.07.2007 to 04.06.2007 ; 11.07.2007 to 24.07.2007 ; 23.01.2008 to 08.02.2008 ; 09.02.2009 to 13.02.2009 and 20.02.2009 to 14.03.2009, has rightly arrived at the loss of income at Rs.20,000/-. Insofar as awarding of sums under other heads, the same cannot be stated to be exorbitant and thus, the Tribunal has rightly arrived at the compensation of Rs.2 lakhs. In the considered opinion of the Court, the quantum commensurates with the injuries and sufferings undergone by the 1st respondent / claimant and it is a just and fair compensation.

13 In the result, the Civil Miscellaneous Appeal is dismissed, confirming the Award and decree passed by the Motor Accident Claims Tribunal [Additional District and Sessions Judge / Fast Track Court No.1], Poonamallee, made in MCOP NO.844/2007 dated 30.09.2010.

14 The appellant / Insurance Company, after satisfying the 1st respondent / claimant, by paying the compensation, is entitled to recover the same from the 2nd respondent / insured. No costs.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

To

1.The Additional District and Sessions Judge
Fast Track Court No.1, Motor Accident Claims
Tribunal, Poonamallee.

Copy to:-
The Section Officer
VR Section, High Court,
Chennai.

+1cc to Mr.M.B.Gopalan, Advocate Sr.63066
+1cc to Mr.K.Varadhakamaraj, Advocate Sr.63034

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ks[co]
srg 27/12/2016