IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.03.2016

CORAM:

THE HONOURABLE MR. JUSTICE S.VAIDYANATHAN

C.M.A.Nos.2225 & 2226 of 2011

M/s.Bajaj Allianz General
Insurance Company Ltd.,
rep. By its Manager,
Having Office at No.11
(Office No.6-A),
People's Park, 3rd Floor,
Government Arts College Road,
Coimbatore Town & Taluk & District. ..Appellant/2nd Respondent
in both Appeals

vs.

1.Rama Moorthy ... 1st respondent/Petitioner
in C.M.A.No.2225/2011

Sekar ... 1st respondent/Petitioner
in C.M.A.No.2226/2011

P. Mani ... 2nd respondent/1st Respondent
in both Appeals

Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988 against the common judgment and decree dated 23.11.2010 made in M.C.O.P.Nos.605 and 606 of 2007, on the file of the Motor Accidents Claims Tribunal, Additional District Court, Dharmapuri.

For Appellant in both Appeals : Mr.N.Vijayaraghavan
For 1st Respondent in both Appeals : Mr.M.Selvam

COMMON JUDGMENT

The Insurance Company has come up with these appeals mainly challenging their liability to compensate the claimants.

2. Since the facts and issue involved in both these Appeals are one and the same, the Appeals are taken up for disposal by a common judgment.

3. On 02.08.2005, around 12.30 p.m., when the claimant Sekar along with his brother Ramamurthy as a pillion rider, was riding his T.V.S. Super XL bearing Registration No.TN 29 F 6602 on Belrampatti-Palacode road, near Marappan Sugar Cane Field, a Mini Door vehicle bearing Registration No.TN 20 H 2398 belonging to the 2nd respondent herein, came in a rash and negligent manner and dashed against the two-wheeler, as a result of which, both the claimants sustained injuries. The injured Ramamurthy filed a claim petition before the Tribunal seeking a sum of Rs.50,000/- as compensation and the injured Sekar filed a claim petition seeking a sum of Rs.12,00,000/- as compensation.

4. The Tribunal, on consideration of the oral and documentary evidence, awarded a sum of Rs.20,144/- as compensation to the injured claimant/Ramamurthy and a sum of Rs.1,91,925/- as compensation to the injured claimant/Sekar. As regards the liability to pay compensation, the Tribunal held that the Insurance Company is liable to compensate the claimants, as the offending vehicle was driven by the son of the 2nd respondent.

5. Learned counsel for the appellant/Insurance Company contended that the Tribunal grossly erred in holding that the appellant is liable to pay compensation, when it is has been clearly established that the vehicle involved is a Transport vehicle that requires a specific licence with badge endorsement.

6. In reply, learned counsel appearing for the 1st respondent/claimant in both petitions, submitted that the Insurer is liable to pay compensation to Third party claimants. In support of his case, he relied on a decision in the case of S.Iyyappan vs. United India Insurance Co. Ltd. and another reported in (2013 (2) TNMAC 262 (SC), wherein, the Supreme Court has held as under:

> "17. The heading "Insurance of Motor Vehicles against Third Party Risks" given in Chapter XI of the Motor Vehicles Act, 1988 (Chapter VIII of 1939 Act) itself shows the intention of the legislature to make Third Party insurance compulsory and to ensure that the victims of accident arising out of use of motor vehicles would be able to get compensation for the death or injuries suffered. The provision has been inserted in order to protect the persons traveling in vehicles or using the road from the risk attendant upon the user of the motor vehicles on the road. To overcome this ugly situation, the legislature has made it obligatory that no motor vehicle shall be used unless a Third Party Insurance is in force.

> 18. Reading the provisions of Sections 146 and 147 of the Motor Vehicles Act, it is evidently clear that in certain circumstances the Insurer's right is safeguarded but in any event the Insurer has to pay compensation when a valid Certificate of Insurance is issued notwithstanding the fact that the Insurer may proceed against the insured for recovery of the amount. Under Section 149 of the Motor Vehicles Act, the Insurer can defend the action inter alia on the grounds namely, (i) the vehicle was not driven by a named person, (ii) it was being driven by a person who was not having a duly granted licence, and (ii) person driving the vehicle was disqualified to hold and obtain a driving licence. Hence, in our considered opinion, the Insurer cannot disown its liability on the ground that although the driver was holding a licence to drive a Light Motor Vehicle but before driving Light Motor Vehicle used as Commercial vehicle, no endorsement to drive Commercial vehicle was obtained in the driving licence. In any case, it is the statutory right of a third party to recover the amount of compensation so awarded from the Insurer. It is for the Insurer to proceed against the insured for recovery of the amount in the event there has been violation of any condition of the Insurance Policy.
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> 19. In the instance case, admittedly the driver was holding a valid driving licence to drive light motor vehicle. There is no dispute that the motor vehicle in question, by which accident took place, was Mahindra Maxi Cab. Merely because the driver did not get any endorsement in the driving licence to drive Mahindra Maxi Cab, which is a light motor vehicle, the High Court has committed grave error of law in holding that the Insurer is not liable to pay compensation because the driver was not holding the licence to drive the commercial vehicle. The impugned judgment is, therefore, liable to be set aside."

7. In view of the above decision, the appellant/Insurance Company cannot disown its liability to compensate the claimants and it is the statutory right of a third party to recover the amount of compensation so awarded from the Insurer.

8. Accordingly, the Civil Miscellaneous Appeals are dismissed, confirming the liability as also the quantum of compensation and the rate of interest at 7.5% per annum awarded by the Tribunal in both the Claim Petitions. It is made clear that if no amount is deposited so far, the appellant/Insurance Company is directed to deposit the entire award amount in both the claim petitions together with accrued interest to the credit of M.C.O.P.Nos.605 and 606 of 2007 on the file of the Motor Accidents Claims Tribunal, Additional District Court, Dharmapuri, within a period of four weeks from the date of receipt of a copy of this order. On such deposit, claimants shall be paid the entire award amount along with accrued interest by means of a crossed Account Payee Cheque, favouring only them and it should not be issued in favour of any other person/Company. No costs.

Sd/-
Assistant Registrar(V)

//True Copy//

Sub Assistant Registrar

aeb

To:

The Additional District Court,
Motor Accidents Claims Tribunal,
Dharmapuri.

+ 2 ccs to Mr.M. Selvam, Advocate SR.14615 & 14616
+ 2 ccs to Mr.M.B. Gopalan, Advocate SR.14809 & 14810

C.M.A.Nos.2225 & 2226 of 2011

EV(CO)
EU 28.11.16