

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 17.06.2016

CORAM

THE HONOURABLE MR.JUSTICE T. MATHIVANAN

C.M.A.No.3401 of 2009

and

M.P.No.1 of 2009

M/s. Bajaj Allianz General Insurance Company Ltd.,
No.7, 1st Floor,
Mandi Street,
Vellore.

...Appellant/2nd Respondent

Versus

1.Venu
2.Suresh

... Respondents/Petitioner/
1st Respondent

Prayer: Civil Miscellanies Appeal has been filed under Section 173 of the Motor Vehicles Act of 1988, against the Judgment and decree dated 27.08.2009 passed in M.C.O.P.No.243 of 2005 on the file of the Motor Accidents Claims Tribunal (Subordinate Court), Cheyyar, Thiruvannamalai District.

For Appellant :Ms..Harini for Mr.M.B.Gopalan
For R1 :Mr.S.Makesh

JUDGMENT

Questioning the quantum of compensation, the appellant/Insurance Company, who is the second respondent in the Claim Petition in MCOP.No.243 of 2005 has filed the present Civil Miscellaneous Appeal under Section 173 of the Motor Vehicles Act 1988.

2. The first respondent/claimant had moved the Motor Accidents Claims Tribunal (Sub-Court) Cheyyar at Thiruvannamalai District, claiming a sum of Rs.3,00,000/- for the injuries sustained by him in a road traffic accident said to have been taken place on 27.07.2005 at Seyyanur Pettai Village, involving a Hero Honda motorcycle bearing Registration No.TN.25-W-9784 belonging to the second respondent herein, who is the first respondent in the Claim Petition.

3.The appellant/Insurance Company had contested a claim by filing their counter statement. The first respondent being the owner of the vehicle had not contested the claim petition as he

remained exparte. Based on the evidences both oral and documentary, the Tribunal had proceeded to award totally a sum of Rs.1,16,000/- under the following heads:

(a)Pain and suffering	Rs.20,000/-
(b)Transport Expenses	Rs.4,000/-
(c)Extra Nutrition	Rs.3,000/-
(d)Attendant Charges	Rs.2000/-
(e)Loss of Income during the course of treatment	Rs.5000/-

Since the first respondent/claimant had suffered with the disability to the extent of 41%, the Tribunal had awarded a sum of Rs.2000/- per 1%. Accordingly, the Tribunal had awarded a sum of Rs.82,000/-, towards disability. Totally, the Tribunal had awarded a sum of Rs.1,16,000/- towards compensation, directing the appellant/Insurance Company to pay this amount with interest @ 7.5% per annum from the date of petition.

4. Ms.Harini, learned counsel appearing for the appellant/Insurance Company, while advancing her argument has drawn the attention of this Court to the counter statement filed by the second respondent, wherein, in paragraph (2)(a), the appellant has contended that the second respondent herein/R1 was not having effective and valid driving licence to drive the class of vehicle at the time of occurrence and that as contemplated under Section 3 of the Motor Vehicles Act 1988, he was supposed to have an effective and valid driving licence to drive the class of vehicle at the material point of time.

5. The learned counsel has also argued that since there was a gross violation of law and breach of terms and conditions of the policy, the owner of the motorcycle alone could be made liable to pay compensation to the victim. She has also maintained that even if the award was to be passed that had to be satisfied by the second respondent/owner of the vehicle only, as held by the Supreme Court in National Insurance Company Ltd., Vs. Kusum Rai & Others, II (2006) ACC 19(SC).

6. This specific stand taken by the appellant/Insurance Company was neglected by the Tribunal saying that the appellant/Insurance Company had miserably failed to prove their contention that the driver of the motorcycle was not having valid driving licence at the time of accident.

7. Mr.S.Makesh, learned counsel appearing for the first respondent /claimant has contended that it is for the appellant/Insurance Company to prove that the driver of the motorcycle was not at all having valid driving licence and the burden of proof was not rested upon the first respondent/claimant instead it is rested upon the shoulder of the Insurance company.

8. However, on perusal of the award, this Court finds that despite the specific stand taken by the appellant/Insurance Company that the driver of the motorcycle was not having valid driving licence at the time of accident the Tribunal had failed to consider their stand and proceeded to award compensation as against the Insurance Company, which is totally inconsistent and not sustainable and therefore, the award itself is liable to be dismissed.

9. Considering the nature of the case as well as the nature of defence taken by the appellant/Insurance Company, this Court is of the considered view that the offending vehicle was insured with the appellant/Insurance Company at the material point of time that was not denied.

10. However, this Court finds that since, the driver of the motorcycle was not having valid driving licence to drive the class of vehicle at the relevant point of time, the whole liability of the Insurance Company towards the third party cannot be taken away completely.

11. In view of the decision of the Apex Court in Munna Lal Jain and Another Vs. Vipin Kumar Sharma and Others 2015(1) TN MAC 814 (Supreme Court), this Court finds that the appellant/Insurance Company may be directed to deposit this amount alongwith interest @ 7.5% from the date of petition till the date of deposit, within a period of four weeks from the date of receipt of a copy of this order, if not deposited earlier. The Insurance Company is also at liberty to recover this amount from the owner of the vehicle by way of execution proceedings without actually filing any suit for recovery of money.

12. Accordingly, the Civil Miscellaneous Appeal is partly allowed confirming the award of the Tribunal. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-

Asst. Registrar (CS II)

/true copy/

Sub Asst. Registrar

To

1. The Motor Accident Claims Tribunal,
(Subordinate Court), Cheyyar, Thiruvannamalai District .
2. The Section officer,
V.R. Section, High Court, Madras.

+1 cc to Mr. M. B. Gopalan, advocate, sr. 33633

+1 cc to S. Makesh, advocate, sr. 33484.

gj (co)

krd 25/10

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