

IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED : 27.02.2017

CORAM:

THE HONOURABLE MR.JUSTICE N.AUTHINATHAN

C.M.A.Nos.1170 & 1171 of 2011

Bajaj Alliance General Insurance Co. Ltd.,
No.25/26, Prince Towers,
Ground Floor, Chennai - 600 006. ... Appellant
[in both C.M.As.]

-vs-

1.R.Banumathi
2.S.Vijayakumar ... Respondents
[in both C.M.As.]

Common Prayer: Civil Miscellaneous Appeals filed under Section 173 of Motor Vehicles Act, 1988, against the common judgment and decree dated 10.08.2010 made in M.C.O.P.Nos.5585 and 5595 of 2004 respectively on the file of the Motor Accidents Claims Tribunal (Chief Judge Court of Small Causes), Chennai.

For Appellant : Mr.S.Arun Kumar
[in both C.M.As.]
For Respondent No.1 : Mr.P.Shanmugasundaram
[in both C.M.As.]
For Respondent No.2 : No Appearance
[in both C.M.As.]

C O M M O N J U D G M E N T

These appeals arose out of a common judgment dated 10.08.2010 in M.C.O.P.Nos.5585 and 5595 of 2004 on the file of the Motor Accidents Claims Tribunal (Chief Court of Small Causes), Chennai.

2. The Insurance Company is the appellant. The second respondent is the owner of the offending vehicle. The claimant / first respondent filed M.C.O.P.No.5585 of 2004 for compensation of Rs.2,00,000/- for the injuries sustained by her in a motor accident. She filed M.C.O.P.No.5595 of 2004 claiming compensation of Rs.9,00,000/- for the death of her husband Mohan in the said accident.

3. The accident occurred on 26.07.2004, at about 20.20 hours. At the time of accident, the claimant was riding pillion on a motor cycle bearing Registration No.TN-07-P-6675 and it was driven by her husband Mohan. When they were on Tharamani 100 feet road, Chennai, Venkatesan, the rider of motor cycle bearing Registration No.TN-09-AF-2664, owned by the second respondent and insured with the appellant, drove the motor cycle, in a rash and negligent manner and dashed against the motor cycle of the deceased, as a result, the claimant and her husband sustained injuries and later, the husband succumbed to his injuries at the Hospital. The claim petition has been filed against the owner of the offending vehicle and the insurer. The rider of the offending vehicle has not been made as a party to the petitions. The second respondent, the owner of the offending vehicle also remained exparte.

4. The claimant in support of her case examined herself as P.W.1. She has given evidence to the effect that the accident occurred due to the rash and negligent driving of the said Venkatesan. The Tribunal has also accepted the case of the claimant.

5. The only contention raised by the learned counsel for the appellant is that the insurer is not liable to pay compensation inasmuch as the driver of the offending vehicle did not have any valid licence to drive the vehicle at the time of accident.

6. There is no challenge as regards the quantum and also as against the finding on the question of negligence.

7. The insured remained exparte. On behalf of the Insurance Company / appellant, their Legal Executive has been examined as R.W.1 and their Investigator invested into the accident has been examined as R.W.2. They have given evidence to the effect that the rider of the offending vehicle did not hold licence. It is not in dispute that the offending vehicle was insured with the appellant. The Tribunal has come to the conclusion that the appellant has not proved that, Venkatesan, did not possess valid licence at the time of accident. The learned counsel appearing for the appellant would submit that the Tribunal failed to note that the rider of the offending vehicle and the owner of the offending vehicle, inspite of receiving notices sent by them not chosen to enter the witness box and that, therefore the Tribunal ought to have drawn adverse inference against them. He would further submit that the Insurance Company has discharged its burden by examining R.W.1 and R.W.2 and producing Exhibits R.1 to R.7.

8. Ex.R.1 is the copy of the Insurance Policy. As per the policy condition, the vehicle should be used in terms of

Motor Vehicles Act. Ex.R.2 is the letter dated 10.01.2009 addressed to driver Venkatesan. The receipt of the letter was acknowledged by the rider as per Ex.R.3. Likewise, a letter has been addressed to the insured under Ex.R.4. Ex.R.6 is the acknowledgement. Again a letter was sent to the owner and driver by the advocate of the insurer. The owner and driver were called upon to provide the details pertaining to the vehicle and the driving licence of the rider of the motor cycle at the time of accident. However, they have not responded. In an identical situation, the Hon'ble Supreme Court in LAKHAN DAS vs. PUNNI LAL [1997 ACT 1060] has held that "once the insured did not step in the witness-box to prove his case, an adverse inference had necessarily to be drawn against him to the effect that the vehicle had been handed over by him for being driven by an unlicensed driver." In the case at hand, inspite of notices to furnish copy of the driving licence of the rider, the owner and the driver of the offending vehicle did not respond. Therefore, in the light of the dictum laid down by the Hon'ble Supreme Court it can be inferred that the rider of the offending vehicle did not have licence to drive the vehicle at the time of accident.

9. As per the policy conditions, the driver / rider of the vehicle must hold effective driving licence at the time of accident in terms of Rule 3 of the Motor Vehicles Act, 1989. Therefore, there is no difficulty in coming to the conclusion that the insured has violated conditions of the policy. The finding of the Tribunal in this regard is liable to be set aside. However, the victims are third parties. Therefore, there must be a direction to the Insurance Company to pay the award amount for and on behalf of the owner of the offending vehicle, at the first instance. The insurer is entitled to seek recovery from the second respondent by way of appropriate application before the Tribunal without need for any separate proceedings in this regard.

10. In the result, the Civil Miscellaneous Appeals are allowed to the extent indicated above. The award amount is payable by the insurer. The Insurance Company is to recover the compensation amount by filing Executive Petition from the owner of the offending vehicle. Since the appellant / Insurance Company had deposited the entire award amount of Rs.18,500/- with interest at the rate of 7.5% per annum in M.C.O.P.No.5585 of 2004 and Rs.6,15,000/- with interest at the rate of 7.5% per annum in M.C.O.P.No.5595 of 2004 and costs, less the statutory deposit, to the credit of M.C.O.P.Nos.5585 and 5595 of 2004 on the file of the Motor Accidents Claims Tribunal (Chief Court of Small Causes), Chennai, the first respondent / claimant is permitted to withdraw the same with proportionate interest less the amount already withdrawn, if any, by making necessary

application before the Tribunal. There shall be no orders as to costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

sri

To

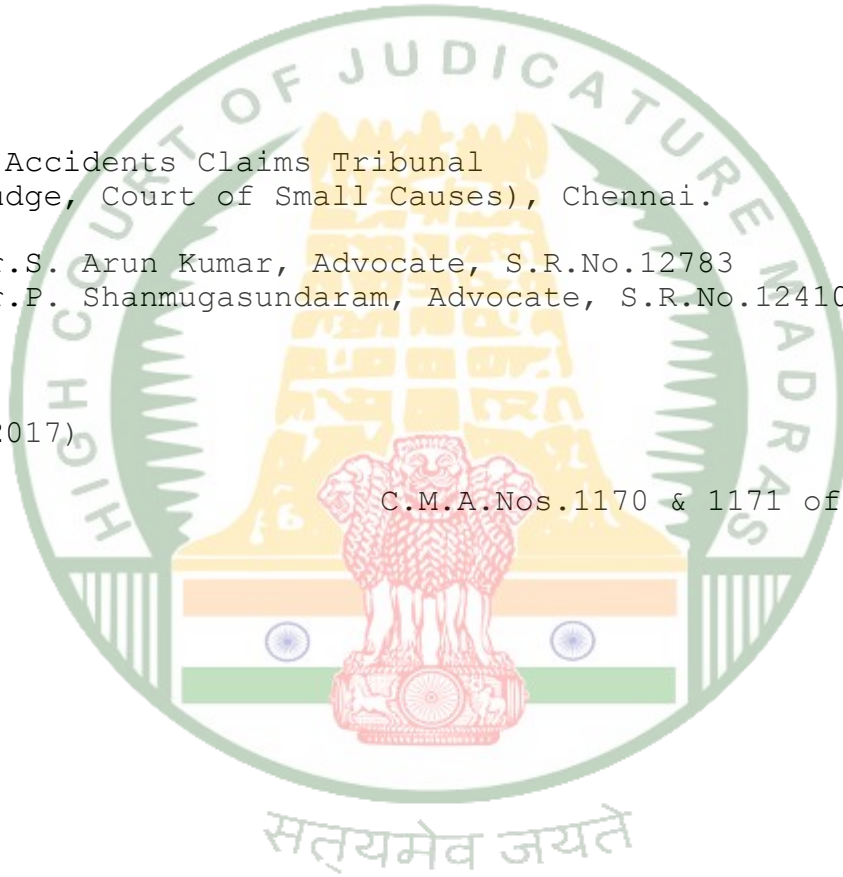
The Motor Accidents Claims Tribunal
(Chief Judge, Court of Small Causes), Chennai.

+1cc to Mr.S. Arun Kumar, Advocate, S.R.No.12783

+1cc to Mr.P. Shanmugasundaram, Advocate, S.R.No.12410

Ks (CO)
VR(12/04/2017)

C.M.A.Nos.1170 & 1171 of 2011



WEB COPY