IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.03.2017

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THE HONOURABLE Mr.JUSTICE N.AUTHINATHAN

CMA.No.1452 of 2009
and
MP.No.1 of 2009

Bajaj Allianz General Insurance Co. Ltd.,
Branch Office
Government College Road,
Coimbatore. ... Appellant/2nd Respondent

Vs.

1. V.Radha
2. Minor Loganathan S/O.Velmurugan
3. Minor V.Renukadevi ... Respondents 1 to 3/ Petitioner 1 to 3

(Minors 2 & 3 represented by their mother & natural guardian Mrs.V.Radha)

4. R.Viswanathan ...4th Respondent/ 1st Respondent

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against Judgment and decree dated in M.C.O.P.No.681 of 2006 dated 16.06.2008, on the file of the Motor Accident Claims Tribunal, Subordinate Court, Dharapuram.

For Appellant : Mr.Srinivasan Ramalingam

For R1 to R3 : Mr.MA.P.Thangavel

R4 : Exparte

JUDGMENT

The Insurance company is the appellant herein. The claim petition in M.C.O.P.No.681 of 2006 on the file of Motor Accidents Claims Tribunal Sub-Court, Dharapuram, has been filed by the Wife and the children of the deceased Velmurugan, who died in an accident, when he was travelling in the motor cycle bearing Registration No.TN 38 AC 3682 as a pillion rider. The offending vehicle was owned by R.Viswanathan, the 4th respondent herein. The vehicle was insured with the appellant herein. The

Tribunal has awarded a total compensation of Rs.3,70,000/- as against the total claim of Rs.10,00,000/-. The Insurance Company filed the above appeal on the ground that the compensation amount is excessive.

2. According to the claimants, at the time of accident, i.e. on 02.06.2006, the 4th respondent was riding the above said bike with the deceased Velmurugan and due to the rash and negligent driving, the vehicle capsized and as a result of which the victim Velmurugan sustained injuries and admitted into the Ramakrishna Hospital, Coimbatore, for treatment and he died on 06.07.2006. The 4th respondent remained exparte before the Tribunal.

3. The Insurance Company resisted the claim on the ground that no additional premium was paid by the insured to cover the risk of pillion rider. They have not challenged the quantum of compensation fixed by the Tribunal. The Insurance Policy has been marked as Ex.R1 and an Official of the Insurance Company was examined as RW1. The relevant clause of Ex.R1 - Section II - Liability to third parties of the Insurance Policy reads as follows:-

> "Subject to the limits of liability as laid down in the Schedule hereto the company will indemnify the insured in the event of an accident caused by or arising out of the use of the insured vehicle against all sums which the insured shall become legally liable to pay in respect of
>
> i) death of or bodily injury to any person including occupants carried in the insured vehicle (provided such occupants are not carried for hire or reward) but except so far as it is necessary to meet the requirements of Motor Vehicles Act, the Company shall not be liable where such death of injury arises out of and in the course of the employment of such person by the insured.
>
> ii) damage to the property other than property belonging to the insured or held in trust or in the custody or control of the insured.
>
> PROVIDED ALWAYS that the Company shall not be liable in respect of death injury or damage caused or arising beyond the limits of any carriageway or thoroughfare in connection with the bringing of the load to the vehicle for loading thereon or the taking away of the load from the vehicle after unloading there from."

4. A close reading of the Insurance Policy reveals that the insurer is liable to indemnify the insured in the event of an accident caused by or arising out of the use of the insured vehicle against all sums which the insured shall become legally liable to pay.

5. In the case on hand, it is not in dispute that accident arose out of use of the insured vehicle. The Tribunal found that the insurer is liable to pay in the light of the provisions of the policy. The appellant contention that they are not liable to pay the compensation, cannot be countenanced, as it has been made clear that the policy covers the risk of pillion rider also. Hence, there is no difficulty in coming to the conclusion, that the appellant is liable to pay the compensation amount. No other point has been urged by the Appellant / Insurance Company before this Court.

6. In the above circumstances, the appeal of the Insurance Company is dismissed and the award of the Tribunal for Rs.3,70,000/- with interest at 7.5% p.a. is confirmed. The insurer has already deposited the entire award amount as per order dated 22.06.2009 in MP.No.1 of 2009 in CMA.No.1452 of 2009. The claimants shall be entitled to withdraw the award amount lying to the credit of the claim petition. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1.The Motor Accidents Claims Tribunal,
Sub-Court, Dharapuram.

2.The Section Officer,
VR Section,
High Court, Madras.

+1cc to M/S.Ma.P.Thangavel, Advocate Sr.13483
+1cc to Mr.Srinivasan Ramalingam, Advocate Sr.13236

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srg 21/04/2017