IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.09.2017

CORAM: THE HONOURABLE Mr.JUSTICE N.SESHASAYEE

CMA.No.841 of 2009
and MP.No.1 of 2009

Bajaj Allianz General Insurance Co. Ltd.,
5th Floor, Wins Towers,
25/26, College Road,
Chennai - 600 006. .. Appellant/2nd Respondent

Vs.

1.Lakshmi W/o. Late Venkatesan
2.Minor Dilip, S/o. Late Venkatesan
3.Minor Murali, S/o. Late Venkatesan
4.Rani, W/o.Kothandan
[Minors 2 & 3 are rep. by their mother and natural guardian 1st respondent] ..1 to 4 Respondent/Petitioners
5.Koteeswaran
[R5 ex parte in Lower Court, notice may be dispensed with] .. 5th Respondents/1st Respondent

Prayer : Civil Miscellaneous Appeal preferred under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree in MCOP.No.658 of 2005 dated 05.11.2008 on the file of the Motor Accidents Claims Tribunal, Additional District Court, Fast Track Court No.I, Poonamallee.

For Appellant :Mr.N.Vijayaraghavan
For Respondents :Mr.S.Sathish Rajan [for R1 to R4]
R5- Ex parte

JUDGMENT

The claim was filed by legal heirs of victim who was knocked down by motor cycle belonging to the fifth respondent in accident on 14.07.2006. The claim was filed, based on police charge sheet that one Stephen Raj was driving the vehicle.

2. However, the appellant submits that Stephen Raj has been substituted as driver but the motor cycle was driven by the fifth respondent himself and as he had no driving licence, the substitution was resorted to.

3. The appellant places strong reliance upon Ext.R1, the Accident Register of M/s.Sundar Hospital, Poonamallee and Ext.R3, investigation report of their Investigator R.W.1.

4. The Tribunal has rejected these documents as not properly proved or satisfactory and held that the vehicle was driven by Stephen Raj with valid driving licence.

5.The counsel for the appellant strenuously argued that the Tribunal has failed to appreciate the fraud involved in substitution of the driver of the motor cycle, by introducing a person who had driving licence, whereas Ext.R1, the Accident Register clearly revealed that the fifth respondent had driven the vehicle and met with an accident at a place which tallies with the place of occurrence in the present claim.

6. This Court appreciates the contention of the appellant in this regard. When the Accident Register had been produced and marked without any objection, it is not fair to hold subsequently that the appellant had failed to prove the same. Equally, the Investigator has submitted his report and examined himself in evidence to prove the same. The Investigator has only stated that he came to know through enquiry that the fifth respondent, the owner himself drove the motor cycle and met with accident. The report does not stop there. The facts reported by the Investigator are corroborated by the Accident Register and therefore, the report cannot be discarded merely for the reason that statements in writing were not submitted with the report from the persons examined. The report could perhaps be disregarded, if the corroborating Accident Register was not available. However, when the conclusion in the Investigation Report is corroborated by the Accident Register, the conclusion of the Investigator or his report cannot be rejected on the ground that statements of witnesses were not submitted.

7. However, the above cannot help the cause of the appellant. Assuming that the fifth respondent drove the vehicle, it must be proved that he had no valid driving licence. It is recognised that the factum of absence of driving licence has to be proved by certain evidence including but not limited to notice to the owner, examination of RTO etc., The Investigator's report in this regard cannot be accepted. Though a returned cover is produced, the appellant has not shown that they had issued notice to the proper address of the fifth respondent. The returned cover shows that the notice was not served. The notice is not a formality if the insurance company wishes to rely upon the same for drawing adverse inference against the owner. There is no evidence to show that further steps were taken to secure the details of driving licence. The

investigation report - Ext.R1 itself is vague and lacks material particulars as to where and when enquiries were made in regard to driving licence. Hence, this Court is not satisfied that the insurer has discharged their burden in regard to proof of lack of driving licence, assuming that the fifth respondent drove the vehicle. It is needless to mention that the burden of proof is heavily on the appellant to establish the absence of driving licence. It is not necessary for the driver to provide the driving licence to the insurer (1985 ACJ 397 SC)

8. For this reason, the insurer has not proved breach and therefore cannot seek exoneration or even a "pay and recover" order against the fifth respondent. This Court, therefore, finds no grounds to interfere with the award in favour of the claimants. No other point was urged. Hence, the appeal fails and is dismissed and the appellant/insurance company is directed to deposit the entire award of compensation along with the accrued interest, less any amount already deposited, within a period of six weeks from the date of receipt of a copy of this order, whereupon the claimants are permitted to withdraw their shares in the same ratio as it was done by the Tribunal. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To:
1.The Judge,
Motor Accidents Claims Tribunal
Additional District Court,
Fast Track Court No.I, Salem.

+1 cc to Mr.S.Sathish Rajan Advocate sr 65536
+1 cc to Mr.M.B.Gopalan Advocate sr 65845

C.M.A.No.841 of 2009

svi(co)
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