BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 29.11.2017

PRONOUNCED ON : 21.12.2017

CORAM

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A(MD)No.1091 of 2011

Bajaj Allianz General Insurance
Company Limited,
Trissure. ... Appellant/3rd Respondent

vs.

1. Ashok ... 1st Respondent/Claimant

2. The Managing Director,
Sri Pathra Group Bay Watch Parks, Kanyakumari.

3. United India Insurance Company Limited,
Trissure. ... Respondents 2 & 3/
Respondents 1 & 2

PRAYER:- Civil Miscellaneous Appeal filed under Section 30 of the Workmen Compensation Act against the award, dated 30.06.2010 made in W.C.No.19 of 2005 on the file of the Commissioner of Workmen Compensation (Deputy Commissioner of Labour), Tirunelveli.

For Appellant : Mr.S.Srinivasa Raghavan
For R – 1 : Mr.P.Prabhakaran
For R – 2 : No appearance
For R – 3 : Mr.A.S.Mathialagan

JUDGMENT

This Civil Miscellaneous Appeal has been filed by the appellant/Bajaj Allianz General Insurance Company Limited against the award, dated 30.06.2010 made in W.C.No.19 of 2005 on the file of the Commissioner of Workmen Compensation (Deputy Commissioner of Labour), Tirunelveli.

2.In the claim petition, it is stated that the injured claimant viz., Ashok employed under the first respondent. On 24.09.2002 at about 12.15 hours, while he was driving the Boxer A7 bearing Registration No.KLSU-5381 belonging to the second respondent/first respondent, towards Kovalam main road, in order to visit the place of construction of building owned by the employer, the vehicle skidded, in which he sustained severe injury in his right leg and due to which, there was a fracture. Due to the injury sustained, he was unable to do work, as he did earlier. At the time of accident, he is aged about 35 years and he earned a sum of Rs.2,500/- per month from the first respondent. Hence, the injured claimant filed W.C.No.19 of 2005 before the Commissioner of Workmen Compensation (Deputy Commissioner of Labour), Tirunelveli, claiming a sum of Rs.2,00,000/- as compensation from the respondents.

3.In the counter affidavit filed by the appellant/third respondent-Bajaj Allianz Insurance Company, it is submitted that the Managing Director of the first respondent therein had taken a motor policy for the new Bajaj Motor Cycle and had paid a premium of Rs.480/- covering the risk of basic TP and own damage basic premium. As per the policy, the insurers are liable only to the third party damages and the loss or damage to the vehicle. No additional premium had been paid towards personal accident to the employees or he has not taken any Workmen Compensation policy covering the risk of the first opposite party-employees. Further, it is stated that there is no iota of evidence to show that the first opposite party has employed the claimant and he has sustained injuries during the course of employment and the accident had occurred arising out of employment and prayed for dismissal of the claim petition.

4.In the claim petition, the United India Insurance Company Limited, Tiruchur was shown as second respondent. When the claim petition was taken up for trial, it came to the knowledge that the vehicle bearing Registration No.KL 8U-5381 was not registered with the United India Insurance Company but it was registered with Bajaj Allianz Insurance Company. Hence, the United India Insurance Company was exonerated from the proceedings and the Bajaj Allianz Insurance Company was impleaded as third respondent in the claim petition.

5.Before the Commissioner of Workmen Compensation (Deputy Commissioner of Labour), Tirunelveli, on the side of the injured claimant, one witness viz., P.W.1 was examined and ten documents viz., Exs.P.1 to P.10 were marked and on the side of the third respondent, one witness viz., R.W.1 was examined and three documents viz., Exs.R.1 to R.3 were marked.

6.The Workmen's Compensation Commissioner, after discussing the evidence and documents on record, reached the conclusion that the accident has occurred at the time of employment and at the time of accident, the vehicle which involved in the accident, was insured with the appellant/third respondent-Bajaj Allianz Insurance Company and it was in force and hence, according to the terms and conditions of the Insurance Policy, the appellant/third respondent-Bajaj Allianz Insurance Company is liable to pay the compensation of

Rs.23,647/- on behalf of the second respondent/first respondent as per the following formula:

Wages	: Rs.2,500/- per month
Age	: 35 years
Factor	: 197.06
Loss of earning capacity	: 08%
Compensation payable	: Rs.2,500 X 60% X 197.06 X 08%
	: Rs.23,647/-

Against the said award, the appellant/third respondent-Bajaj Allianz Insurance Company has filed the present Civil Miscellaneous Appeal.

7.In this Civil Miscellaneous Appeal, the appellant Insurance Company has raised the following Substantial Questions of Law for consideration:

> “1.Whether the learned Commissioner for Workmen Compensation has got jurisdiction to adjudicate a dispute without employer-employee relationship between the injured claimant and the owner of the vehicle when the vehicle involved in the accident happened to be a private vehicle/two wheeler?
>
> 2.Whether the learned Commissioner for Workmen Compensation is justified in holding that a rider of the two wheeler/private vehicle is covered by the policy of insurance when there is no payment of premium for such a class of persons?
>
> 3.Whether the learned Commissioner for Workmen has committed an error by holding that the risk of a rider of the two wheeler/private service vehicle is covered under the provisions of Section 147 of the Motor vehicle Act?
>
> iv) Whether the findings of the learned Commissioner for Workmen Compensation are sustainable in law in view of the fact that the findings are arrived at on the basis of a perverse appreciation of evidence and interpretation of the legal provisions?”

8.The learned counsel appearing for the appellant/Bajaj Allianz Insurance Company submitted that the learned Commissioner ought to have found that the vehicle involved in the accident was a private vehicle and as such, there was no coverage for the injured claimant under Section 147 of the Motor Vehicles Act and as such, the learned Commissioner ought not to have entertained the claim petition under the provisions of the Workmen Compensation Act. The learned Commissioner ought to have found that he has got no jurisdiction to entertain the claim petition, since there is no employer-employee relationship between the injured claimant and the owner of the vehicle, especially, in the light of the fact that the vehicle involved in the accident is a private vehicle. The learned Commissioner ought not to have found that the policy of insurance issued by the owner of the vehicle covers the rider/injured claimant and such, the finding is fallacious and is against the provisions of the Motor Vehicle Act and the terms and conditions of the policy of insurance.

9.The learned counsel for the first respondent/injured claimant submitted that the award passed by the the Commissioner of Workmen Compensation (Deputy Commissioner of Labour), Tirunelveli, deserves no interference and hence, this appeal has to be dismissed.

10.Heard the learned counsel appearing on both sides and perused the materials available on record.

11.The learned counsel for the appellant/Bajaj Allianz Insurance Company would argue that the claimant is not a regular driver and cannot claim any compensation, but this Court has relied and based on the Judgment of the Kerala High Court in ***United India Insurance Company Limited Vs. P.R.Surendran and others reported in 2015 ACJ 604***, wherein, it is held that *"Insurance Company disputes its liability on the ground that in order to get coverage of clause (a) of proviso (i) to Section 147(1), an employee should be employed as a driver and should be engaged in driving and the expression 'engaged in driving the vehicle' used in the Section does not specify either class of vehicle covered by this provision or nature of employment of person engaged in driving the vehicle and whether employee need only be engaged in driving the vehicle, irrespective of the fact that he was employed as driver or not to claim coverage of clause (a) of the proviso (I) to Section 147 of the Motor Vehicles Act, 1988 held in affirmative. In the similar case, wherein it is stated that the claimants in the Workmen's Compensation were sales representatives employed by their respective employers. As part of their conditions of service, their employers had provided them two-wheelers. While riding the vehicles in the course of their employment, they met with accidents, resulting in bodily injury resulting in claiming compensation under Workmen's Compensation Act under the benefit of coverage of the Insurance Policy. The first proviso and clause (a) thereof, being relevant, are extracted below for reference:-*

"Provided that a policy shall not be required-

(i) to cover liability in respect of the death, arising out of and in the course of his employment, of the employee of a person insured by the policy or in respect of bodily insured by the policy or in respect of bodily injury sustained by such an employee arising out of and in the course of his employment other than a liability arising under the Workmen's Compensation Act, 1923 (8 of 1923) in respect of the death of, or bodily injury to, any such employee-

(a) engaged in driving the vehicle, or"

12.In the above said Judgment, the contention of the Insurance Company that in order to get the coverage of Clause (a) of the proviso to Section 147(1), an employee should be employed as a driver and he should be engaged in driving. This Court would be adding words to the statute, which is impermissible for the Court interpreting statutory provisions. Therefore, as per Section 147(1) of the Motor Vehicles Act, the employee employed under clause (a) should be employed, cannot be taken into account that the words used in clause (a) are 'engaged in driving the vehicle' and not engaged as a permanent driver and the Insurance Company is liable to pay compensation. As per Section 3(1) of the Motor Vehicles Act, the liability of an employer to pay compensation in accordance with the provisions of Chapter II of the workmen's Compensation Act is for the personal injury caused to a workman by the accident arising out of and in the course of his employment and therefore, proviso (i)(a) of Section 147(1) can be interpreted by holding that it is not necessary for a person to be employed exclusively as a driver under an employer to sustain a claim referable to the said provision and one who is engaged in driving the vehicle, thereby meaning, driving the vehicle at the time of accident, is entitled to compensation and insurance covered under the said proviso, provided he was in the employment of the employer and therefore, a workman and still further, that he was driving the vehicle at the time of accident under due authorisation of the employer.

13.In this case, when the owner himself has permitted the employee to drive the motor cycle for attending the work connected with the employment, he was covered under the Workmen's Compensation Act and the claim of the owner is to be entertained and the appellant/Bajaj Allianz Insurance Company is liable to pay compensation on behalf of the owner of the vehicle, who has taken the said policy in chasis No.DFFBJA84603.

14.From Ex.P.1 it is proved that the claimant was working as an employee and the owner of the vehicle has directed him to inspect the construction work carried out in his premises. Hence, the Commissioner has got jurisdiction to adjudicate.

15.It is found that in Ex.R.1-Policy, the address of the owner is Managing Director, Sri Pathra Parks and Resorts Limited and in the said policy coverage in driver's column policy holder and any other person, who possess valid licence is covered. Hence, the claimant is covered in the said policy, since the injured claimant possessed valid licence, which is marked as Ex.P.10.

16.The Commissioner has rightly held that the private service/two wheeler is covered as per the policy and only after due consideration, the Commissioner has given a finding and nothing is contrary to law.

17.A perusal of the award passed by the the Commissioner of Workmen Compensation (Deputy Commissioner of Labour), Tirunelveli, clearly shows that the Deputy Commissioner of Labour has discussed in detail and found that at the time of accident, the first respondent/injured claimant was the driver of the offending vehicle and hence, he is entitled to claim compensation and the appellant/Bajaj Allianz Insurance Company is liable to pay compensation and therefore, there is no infirmity in the award passed by the Deputy Commissioner of Labour, Tirunelveli and the same does not require interference at the hands of this Court. The substantial questions of law are answered accordingly.

18.In the result, this Civil Miscellaneous Appeal is dismissed and the award, dated 30.06.2010 made in W.C.No.19 of 2005 on the file of the Commissioner of Workmen Compensation (Deputy Commissioner of Labour), Tirunelveli, is confirmed. The first respondent/claimant is entitled to withdraw the entire amount deposited before the Deputy Commissioner of Labour, Tirunelveli to the credit of W.C.No.19 of 2005. No costs.

Sd/-
Assistant Registrar (P&A)

/True Copy/

Sub Assistant Registrar

To

1. The Commissioner of Workmen Compensation
(Deputy Commissioner of Labour),
Tirunelveli.

2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

+ 1 CC TO Mr.S.SRINIVASA RAGHAVAN, ADVOCATE IN SR No. 94671
+ 1 CC TO Mr.A.S.MATHIALAGAN, ADVOCATE IN SR No. 94406
+ 1 CC TO Mr.P.PRABHAKARAN, ADVOCATE IN SR No. 94291

PS
TE/SKN-RSK/SAR-1 : 10/01/2018 : 6P/6C

Judgment made in
C.M.A(MD)No.1091 of 2011
21.12.2017