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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.10.2018

CORAM:

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.1563 of 2011

M/s. Bajaj Allianz General  
Insurance Company Limited,  
Madurai. ...Appellant/3<sup>rd</sup> Respondent

Vs

1.R.V.Chinnasamy, ... 1<sup>st</sup> Respondent/Claimant  
2.Bhuvaneswaran  
3.R.Elango ... Respondents 2 & 3/Respondents 1 & 2  
(Respondents 2 & 3 exparte in Lower court  
and hence Notice may be dispensed with)

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment & decree passed by the Motor Accident Claims Tribunal, (Chief Judicial Magistrate), Erode in M.C.O.P.No. 30 of 2010 dated 03/03/2010.

For Appellant : Mr.N.Vijayaragavan

For Respondents : Mr.P.Kavirinadan for  
Mr.N.Manokaran for R1

: R2 and R3 Exparte

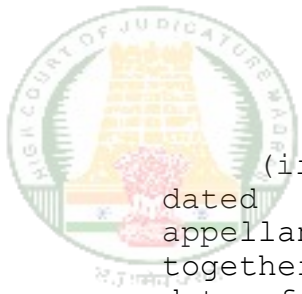
#### JUDGMENT

The instant appeal has been filed by the insurance company challenging the award dated 03.03.2010 passed by the Motor Accident Claims Tribunal, (Chief Judicial Magistrate) Erode, in M.C.O.P.No. 30 of 2010

2.The brief facts leading to the filing of the instant appeal are as follows:

(i) The first respondent sustained injuries on 25.08.2004 as a result of an accident caused by a motor bike bearing Registration No. TN-59-S-1307 owned by the 3<sup>rd</sup> respondent and insured with the appellant.

(ii) The first respondent preferred a claim before the Motor Accident Claims Tribunal in M.C.O.P.No. 30 of 2010 seeking a compensation of Rs.5,00,000/-.



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(iii) The Motor Accident Claims Tribunal, by its award dated 03.03.2010 in M.C.O.P.No. 30 of 2010, directed the appellant to pay the 1<sup>st</sup> respondent a sum of Rs.1,69,377/- together with interest at the rate of 7.5% per annum from the date of claim till the date of the realization.

3. Heard, Mr.N.Vijayaragavan, learned Counsel for the Appellant and Mr.P.Kavirinadan appearing on behalf of Mr.N.Manokaran, learned Counsel for the first respondent. The 2<sup>nd</sup> respondent and the 3<sup>rd</sup> respondent have remained ex-parte, both before the Tribunal as well as this Court.

4. According to the learned Counsel for the appellant, the only ground raised in the instant appeal is that even though, the driver of the insured vehicle did not possess a valid driving licence at the time of the accident, the tribunal under the impugned award has not granted pay and recovery rights to the appellant.

5. This Court has examined the impugned award. As seen from the award, the appellant has filed seven documents on their side which were marked as Ex.R1 to R7 before the tribunal. The documents include their Advocate's notice dated 29.12.2009 together with acknowledgment card, insurance policy, notice dated 07.05.2007 sent by the appellant to the 3<sup>rd</sup> respondent (owner) as well as the 2<sup>nd</sup> respondent (driver). Despite calling upon the owner and driver of the insured vehicle to produce the driving licence, both of them have failed to produce the same to the appellant. The driving licence has also not been marked as an exhibit before the tribunal. The 2<sup>nd</sup> and 3<sup>rd</sup> respondents have also remained ex-parte before the tribunal as well as this Court.

6. Therefore, it can be inferred that the driver of the insured vehicle did not possess a valid driving licence at the time of the accident. But under the impugned award, the tribunal has erroneously not granted pay and recovery rights to the appellant. The tribunal ought to have directed the appellant to pay the 1<sup>st</sup> respondent, the assessed compensation amount and thereafter permitted the appellant to recover the same from the 2<sup>nd</sup> and 3<sup>rd</sup> respondents.

7. In the light of the above observations, this Court is of the considered view that pay and recovery rights will have to be granted to the appellant and the appellant is permitted to recover the compensation amount awarded by the tribunal under the impugned award from the 2<sup>nd</sup> and 3<sup>rd</sup> respondents in accordance with law. Excepting this modification to the impugned award, the quantum of compensation awarded by the tribunal to the 1<sup>st</sup> respondent is not disturbed by this Court.



8. Accordingly, the appeal is disposed of with the above direction. No costs. Consequently, connected M.P.No.1 of 2011 is closed.

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9. It is represented that the entire amount awarded by the tribunal has already been deposited before the tribunal. The first respondent is permitted to withdraw the same on filing an appropriate application before the tribunal.

Sd/-  
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

msr/sbn

To

1. Motor Accident Claims Tribunal,  
Chief Judicial Magistrate,  
Erode.

2.The Record Clerk,  
Vernacular Section,  
High Court, Madras.

+1cc to Mr.N.Manokaran, Advocate sr.no.70853  
+1cc to Mr.M.B.Gopalan, Advocate sr.no.71360

C.M.A.No. 1563 of 2011

kji(co)  
nr 04/12/2018