IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **03.07.2014**

CORAM

THE HONOURABLE MR.JUSTICE S.MANIKUMAR

C.M.A.No.117 of 2014
and
M.P.No.1 of 2014

M/s.Bajaj Allianz General
Insurance Company Limited
People's Park,
Arts College Road,
Coimbatore. ... Appellant

vs.

1.Minor Mohan
rep.by father and next friend
Chandrasekar
2.Madhesh
(2nd respondent *ex parte* in Lower
Court and hence notice may
be dispensed with) ... Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the award and decree, dated 28.01.2011 made in M.C.O.P.No.8 of 2008, on the file of Motor Accidents Claims Tribunal (Sub Judge), Sankagiri.

For Appellant : Ms.C.Harini

For Respondents : Mr.K.Thilageswaran for R2

J U D G M E N T

At the outset, Ms.C.Harini, learned counsel for the Insurance Company submitted that the quantum of compensation is not challenged in this appeal. Submission of the learned counsel is placed on record.

2.According to the learned counsel, the only challenge to the award is that the Claims Tribunal has noticed that the driver of the offending vehicle, Bajaj Platina, bearing Registration No.TN-30AZ-3868, was driven by an unlicensed rider, and when the appellant herein has adduced evidence through RW1, Junior Assistant, office of the Motor Vehicle Inspector, Mettur, to the effect that the rider of the offending motor cycle, insured with them, was issued with a licence only to drive only a heavy vehicle, from 01.09.1998 and subsequently issued with a badge on 08.07.1999 and when RW1 has categorically deposed that from the registers maintained by Regional Transport Office, it was verified that the motorcyclist, was not issued with any two wheeler licence, the Claims Tribunal ought to have exonerated the Insurance Company, the appellant herein, from payment of compensation to the accident victim, a child, aged about 14 years.

3.Mr.K.Thilageswaran, learned counsel for the respondent No.2, submitted that as per the practice followed by the Licensing Authorities stated that the moment, a heavy vehicle licence is issued, all other licences issued earlier, would be surrendered and therefore, it cannot be presumed that the rider did not possess a valid and effective driving licence. Except the above, no other submission has been made.

4.As rightly contended by Ms.C.Harini, learned counsel for the Insurance Company, steps have been taken to ascertain as to whether the motor cyclist, who caused the accident, did possess a valid and effective driving licence or not, on the date of accident, to drive a motor cycle, bearing Registration No.TN-30AZ-3868, insured with them. As rightly pointed out, RW.1, Junior Assistant of the office of Motor Vehicle Inspector, Mettur, on verification of the records maintained in the office, has categorically deposed that the motorcyclist was issued only with a heavy vehicle licence, only from 01.09.1998 and subsequently, taken a badge on 08.07.1999. The Insurance Company by adducing evidence has proved that the rider did not possess a valid and effective driving licence, to drive a two wheeler and thus, violation of policy conditions, is *per se* apparent.

5.Though Mr.Thilageswaran, learned counsel for the respondent/ owner of the two wheeler, bearing RegistrationNo.TN-30AZ-3868, contended that whenever a heavy vehicle licence is taken, all other licences should be surrendered and therefore, no liability can be fastened on the owner of the vehicle, this Court is not inclined to accept the said submissions. It is for the owner of the vehicle, to verify, as to the motorcyclist, had any licence and prevent the vehicle from being operated on road, by any unlicensed person. Failure to do so, or allowing an unlicensed person to drive the motor cycle, is a violation of policy conditions, for which the owner cannot seek for indemnity.

6.The challenge in this appeal, is to the finding, fixing liability on the Insurance Company to pay compensation, on the ground that the rider of the vehicle, bearing Registration No.TN-30AZ-3868, did not possess a valid and effective driving licence, to drive the vehicle and therefore, the Insurance Company ought to have been exonerated from payment of compensation to a third party victim. The said challenge is no longer *res integra* in view of the decisions of the Division Bench of this Court in **United India Insurance Company Ltd., v. S.Saravanan** reported in **2009 (2) TNMAC 103 (DB), United India Insurance Company Limited, Salem, Vs. V.Vijayakumar, represented by his mother Kalamani and three others,** reported in **2010 (2) TN MAC 388 (DB)** and **Bajaj Alliance General Insurance Company Ltd., Pune, Vs.**

Manimozhi and four others, reported in **2010 (2) TN MAC 542 (DB).**

7.The question as to whether, it is open to the insurer to seek for total exoneration for payment of compensation to a third party victim or whether it has only a right of recovery, Section 149 (4) and (5) of the Motor Vehicle's Act, has been extensively considered in **ICICI Lombard General Insurance Company Vs. Annakkili**, reported in **2012 (1) TN MAC 226,** wherein this Court following the principles of law laid down by the Apex Court and the Division bench judgments that payment of compensation to a third party victim or legal representatives of the deceased, as the case may be, being statutory and considering the interpretation given by the Supreme Court to Sections 147, 149 (4) and (5) vis-a-vis the defences open to the Insurance Company under Section 149(2)(a)(ii) of the Motor Vehicles Act and by holding that the very introduction of the words, "pay compensation to the third party and recover the same from the insured" in Section 149(4) and (5) of the Act, would reflect the divine intention of the legislature to protect the interest of the third parties, vis-a-vis inter-se disputes between the insured and insurer, held that the insurer cannot avoid its liability to pay compensation to a third party, but such avoidance can be made only, if willful breach of terms and conditions of the policy by the insured, by consciously and recklessly allowing the driver, who did not possess a valid and effective driving licence, to drive the vehicle and even if such breach is proved, payment of compensation to the third party victim cannot, at any stretch of imagination, be avoided by the Company and that the only remedy open to the insurer in law is to pay the compensation to the third party victims and recover from the insured. In view of the above, the insurer cannot be totally exonerated from payment of compensation to third party, but it can avoid its liability only to the insured.

8.In a recent decision in **S.Iyyapan v. United India Insurance Co. Ltd.,** reported in **2013 (7) SCC 62,** the Supreme Court, while dealing with the similar contentions and after considering a catena of decisions, at Paragraph 17, held as follows:

> "Hence, in our considered opinion, the insurer cannot disown its liability on the ground that although the driver was holding a licence to drive a light motor vehicle but before driving light motor vehicle used as commercial vehicle, no endorsement to drive commercial vehicle was obtained in the driving licence. In any case, it is the statutory right of a third party to recover the amount of compensation so awarded from the insurer. It is for the insurer to proceed against the insured for recovery of the amount in the event there has been violation of any condition of the insurance policy."

9.In the light of the above discussion and decisions stated supra, the award of the Claims Tribunal is modified to that effect that the Insurance Company shall pay a sum of Rs.87,000/- with interest 7.5% per annum determined as compensation, and thereafter, take steps for recovery against the respondent No.2, Mr.Madhesh, S/O.Arthanari, No.5-5-145, Thuraiyur, P.N.Patti, Mettur, Salem District, in the same procedure as decided in **Oriental Insurance Co. Ltd. V. Shri Nanjappan and others, 2004 (1) TN MAC 211 (SC) ; 2004 (2) CTC 464 (SC) : 2004 (1) ACC 524 (SC)**.

10.The Insurance Company is also directed to seek for security of the amount directed to be paid to the claimant. It is represented by the learned counsel for the appellant that when the entire award amount with proportionate accrued interest and costs, has already been deposited, 50% of the award amount with proportionate accrued interest and costs, has been withdrawn. Now, in the light of the order stated supra, the respondent/claimant is permitted to withdraw the remaining 50% of the amount with proportionate accrued interest and costs, by making necessary applications.

03.07.2014

mps

S. MANIKUMAR, J,

mps

To

The Motor Accidents Claims Tribunal (Sub Judge),
Sankagiri.

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