IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.12.2018

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

C.M.A.No.73 of 2011
and
M.P.No.1 of 2011

Bajaj Allianz General Insurance Co. Ltd.,
By its Branch Manager,
11, People's Park 3rd Floor,
Government Arts College Road,
Coimbatore,
Policy No.06-07-1503-1802-00019715.

... Appellant/2nd Respondent

..Vs..

1. Selvaraj .. 1st Respondent/Petitioner

2. Krishnamoorthy ... 2nd Respondent/1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the award and decree dated 15-9-2009 made in M.C.O.P.No.433 of 2007 on the file of The Motor Accidents Claims Tribunal, Fast Track Court No.V, Coimbatore at Tirupur.

For Appellant : Mr.S.Arun Kumar

For Respondents : Mr.Ma.P.Thangavel for R1

: No appearance - For R2

JUDGMENT

The appellant is the Bajaj Allianz General Insurance Company Limited represented by its Branch Manager, Coimbatore. The first respondent filed a claim petition under Section 166 of the Motor Vehicles Act, 1988 in M.C.O.P.No.433 of 2007 before the Motor Accidents Claims Tribunal, Tirupur claiming the compensation of Rs.8,00,000/- for the injuries sustained by him in a road accident that took place on 24.12.2006.

2.The brief facts of the case of the first respondent/claimant is as follows:

On 24.12.2006, the first respondent was riding a two wheeler bearing Registration No.TN39-Z-3458, near Nithya Manokar Sizing, on Somanur - Annur Road. At that time another two wheeler bearing Registration No.TN39-AM-2788 came at high speed and hit the two wheeler driven by the first respondent/claimant, as a result of which the first respondent/claimant sustained grievous injuries.

3. According to the first respondent/claimant, the rash and negligent driving by the rider of the two wheeler bearing Registration No.TN39-Z-3458, was the cause of the accident and that since the said two wheeler was insured with the present appellant, both of them are jointly and severally are liable to pay the compensation to him. The owner of the vehicle namely the first respondent in M.C.O.P.No.433 of 2009 remained absent before the tribunal and therefore, he was set ex-parte. The present appellant contested the claim petition by filing a counter. A specific plea was taken by the present appellant in the counter stating that since the rider of the offending motor vehicle bearing Registration No.TN39-AM-2788, did not have any valid driving licence, they are not liable to pay any compensation to the first respondent/ claimant.

4.The tribunal, after analysing the evidence on record, directed the owner of the two wheeler bearing Registration No.TN39-AM-2788 and his insurer namely Bajaj Allianz General Insurance Company limited, to pay the compensation of Rs.5,53,720/- jointly and severally.

5.Aggrieved over the orders passed by the tribunal, the Bajaj Allianz General Insurance Company Limited has filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.

6.Mr.S.Arunkumar, learned counsel appearing for appellant contended that, when the owner of the two wheeler bearing Registration No.TN39-AM-2788, and the rider of the two wheeler did not produce any driving licence, the tribunal erroneously directed the Insurance Company to pay the entire award amount to the claimant. He also drew the attention of this Court to the notices dated 21.06.2007(Ex.B1 and Ex.B.2) issued by the appellant Insurance Company to the driver as well as the owner of the two wheeler and also the reply notice dated 07.07.2007 (Ex.B4) sent by the driver of the two wheeler bearing Registration No.TN39-AM-2788.

7. A perusal of these documents would clearly go to show that the appellant/Insurance Company had actually issued notices to the driver and owner of the two wheeler bearing Registration

No.TN39-AM-2788, and in fact the driver of the two wheeler, in his reply notice dated 07.07.2007 had clearly stated that he did not possess any valid driving licence. However, the tribunal in paragraph No.6 of its order has observed that the Insurance Company has not discharged the burden cast upon them to prove that there was a breach of policy condition as the rider of motor cycle drove the vehicle without a valid driving licence. Therefore, the tribunal held that the Insurance Company also jointly and severally liable to pay the compensation to the first respondent/ claimant.

8.The said observation of the tribunal cannot be sustained since in the instant case, the driver of the two wheeler had clearly stated that he was not in possession of any valid driving licence on the date of the accident. As per the decision in National Insurance Company Vs. Swaran Singh and others reported in 2004(1) TN MAC 104 (SC), the Hon'ble Supreme Court observed that the onus is always upon the Insurance Company to prove that the driver had no valid driving licence and that there was breach of policy conditions. In the instant case, the Insurance Company has discharged the burden of proof by issuing notices to the owner as well as the driver of the two wheeler bearing Registration No.TN39-AM-2788 and driver had clearly indicated in his reply notice that, he was not in possession of any driving licence on the date of the accident.

9.In such circumstances, as per the decision rendered in National Insurance Company Ltd. vs. Swaran Singh and others cited supra, the insurer had to pay the compensation in the first instance and recover the same from the insured. The Doctrine of Pay and Recover was considered by the Hon'ble Supreme Court in Swaran Singh's case wherein the Hon'ble Supreme Court examined the liability of the Insurance Company in cases of breach of policy conditions due to disqualifications of the driver or invalid driving licence of the driver and held that in case of third party risk, the insurer has to indemnify the compensation amount to the third party and that the Insurance Company may recover the same from the insured. The said decision was followed by a Division Bench of Supreme Court in National Insurance Company Vs. Laxmi Narain Dhut reported in 2007 (1) TN MAC 301 (SCC).

10.Therefore, in the facts and circumstances of the present case, the Insurance Company after paying the compensation amount can recover the same from the owner of the two wheeler namely the second respondent herein, on the same cause of action. As far as the quantum of compensation is concerned, the appellant/Insurance Company did not question the same and the claimant also did not file any cross objection/appeal against the award passed by the tribunal.

11. Therefore, in the facts and circumstances, the appellant/Insurance Company is directed to pay the compensation award passed by the tribunal within a period of four weeks from the date of receipt of a copy of this order, less the amount already deposited by them. On such deposit being made, the first respondent/claimant is at liberty to withdraw the same. The appellant/Insurance Company can recover the award amount from the second respondent namely the owner of two wheeler on the same cause of action and in the same proceedings.

12. In the result, the Civil Miscellaneous Appeal is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

Ssi

To

The Motor Accidents Claims tribunal,
Fast Track Court No.V,
Coimbatore at Tirupur.

Copy To

The Section Officer,
V.R. Section, High Court,
Madras.(2 copies)

+1cc to Mr.S.Arun Kumar, Advocate, S.R.No. 86614
+1cc to Mr.Ma.P.Thangavel, Advocate, S.R.No. 85025

C.M.A.No.73 of 2011
and
M.P.No.1 of 2011

CA(CO)
GN(02/05/2019)