IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 21.03.2018

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The Honourable Mr. Justice S.BASKARAN

Civil Miscellaneous Appeal Nos.2003 and 2004 of 2017

C.M.A.No.2003 of 2017

The Bajaj Allianz General Insurance Company Ltd.,
No.25/26, Prince Towers, Ground Floor,
College Road, Nungambakkam, Chennai. ... Appellant

..vs..

1.J.John Paul
2.Sam Tours and Travel,
No.80, Villianur Main Road,
Reddiarpalayam, Pondicherry.
3.A.Selladurai ... Respondents

C.M.A.No.2004 of 2017

The Bajaj Allianz General Insurance Company Ltd.,
No.25/26, Prince Towers, Ground Floor,
College Road, Nungambakkam, Chennai. ... Appellant

..vs..

1.N.Chakkaravarthy
2.C.Indirani
3.C.Latha
4.C.Annamalai
5.C.Perumal
6.C.Subramani

7.2.Sam Tours and Travel,
No.80, Villianur Main Road,
Reddiarpalayam, Pondicherry.
A.Selladurai ... Respondents

PRAYER IN C.M.A.NO.2003 OF 2017: This Civil Miscellaneous Appeal has filed under Section 173 of Motor Vehicles Act, 1988, against the Fair and Decreetal order dated 15.04.2013 made in MCOP.No.1542 of 2010 on the file of the Motor Accident Claims Tribunal/Principal District Court, Cuddalore.

PRAYER IN C.M.A.NO.2004 OF 2017: This Civil Miscellaneous Appeal has filed under Section 173 of Motor Vehicles Act, 1988, against the Fair and Decreetal order dated 15.04.2013 made in MCOP.No.2204 of 2011 on the file of the Motor Accident Claims Tribunal/Principal District Court, Cuddalore.

For Appellant : Mr.S.Manohar
(in both CMAs)

For Respondents : M/s.D.s.Thirumavalavan for R1 to R6

COMMON JUDGMENT

Being aggrieved over the finding of the Tribunal dated 15.04.2013 made in MCOP.No.1542 of 2010 and M.C.O.P.No.2204 of 2011 on the file of the Motor Accident Claims Tribunal/Principal District

Court, Cuddalore, the third respondent-Insurance Company has come forward with these present appeals seeking to set aside the finding of the Tribunal.

2. For the sake of convenience, the parties will be hereinafter referred to in this judgment as arrayed before the Tribunal.

3. The case of the petitioners is that on 17.04.2010 at about 7.30 p.m., when the petitioner in MCOP.No.1542 of 2010(J.Jhon Paul) was riding his motor cycle bearing Registration No.TN-32-C-5310 along with deceased Mohan(Son and brother of the petitioners in MCOP.No.2204 of 2011), as pillion rider, on the left extreme side of the Pondy - Villupuram Main Road, near Vadamangalam, a Tempo Traveller Van bearing Registration No.PY-01-AL-7700 came from East to West at very high speed dashed against the two wheeler, in which the petitioner and deceased were proceeding causing him(J.Jhon Paul) grievous injuries and multiple fracture on his head and the deceased Mohan was thrown out of the Motor Cycle and sustained grievous injuries and subsequently he died in the Government Hospital, Pondicherry.

3.1. The petitioner in MCOP.No.1542 of 2010(J.Jhon Paul) was admitted in the Government Hospital, Pondicherry and then admitted in Government General Hostpial, Chennai for advance treatment. He is still undergoing treatment. The accident occurred only due to the rash and negligent driving of the driver of the Tempo Traveller Van. The petitioner was aged about 22 years and by working as Labour Contractor, earning a sum of Rs.9,000/- per month. Due to the injuries suffered by him, he is unable to attend his regular avocation. Hence, the petitioner sought for a sum of Rs.10,00,000/- as compensation from the respondents who are the owner and insurer of the offending vehicle.

3.2. The petitioners in MCOP.No.2204 of 2011 contends that the deceased was aged about 24 years at the time of the accident and by working as Supervisor in a private concern was earning a sum of Rs.15,000/- per month. The accident occurred only due to the rash and negligent driving of the driver of the Tempo traveller van. The petitioners who are the father and brothers of the deceased are depending on the income of the deceased. Hence, they seek a sum of Rs.30,00,000/- as compensation from the respondents who are the owner and insurer of the offending vehicle.

4. On the other hand, opposing the claim petition, the 3rd respondent-Insurance company filed counter contending that the accident occurred not due to the negligence of the van driver, but only due to the negligence of the rider of the two wheeler. The third respondent-Insurance Company also denied the claim of the petitioner about the place, date and time of the accident. The third respondent-Insurance Company further contended that the rider of the two wheeler was not having any valid licence and as such they are not liable to pay any compensation to the petitioners. It is further contended that the driver of the van belonging to the first respondent was not having effective driving licence to drive the vehicle. The third respondent also contended that the driver of the first respondent vehicle was charge sheeted under Section 3 r/w 181 of the Motor Vehicle Act for driving the commercial vehicle without necessary batch endorsement. Thus, the third respondent-Insurance Company contended that they are not liable to pay any compensation to the petitioners. The claim of the petitioners under different heads is exorbitant. Thus, the third respondent-Insurance Company sought for dismissal of the claim petitions.

5. Before the Tribunal, both the cases were taken up for joint trial and on the side of the petitioners P.W.1 to P.W.5 were examined and produced documents Ex.P1 to Ex.P22 to substantiate their claim. On the side of the respondents, R.W.1 was examined and Ex.R1 was produced.

6. The Tribunal, on the basis of available materials on record, found the first respondent van driver negligence alone caused the accident and as the owner and insurer of the offending vehicle viz., the respondents are liable to pay compensation and awarded a sum of Rs.3,21,200/- to the petitioner in M.C.O.P.No.1542 of 2010 (CMA.No.2003 of 2017) and to pay a sum of Rs.4,70,000/- as compensation to the petitioners in M.C.O.P.No.2204 of 2011 (CMA.No.2004 of 2017). Being aggrieved over the said finding of the Tribunal, the third respondent-Insurance Company has come forward with the present appeals.

7. I have heard the learned counsel appearing for the 3rd respondent/appellant-Insurance Company and the learned counsel appearing for the petitioners/claimants in both appeals and perused the materials available on record.

8. The learned counsel appearing for the appellant/third respondent/ Insurance company contends that the driver of the first respondent vehicle was not having valid licence on the date of occurrence on 17.04.2010, when the accident took place. The driver of the first respondent does not possess batch entry to drive the commercial vehicle. The Tribunal failed to consider the evidence of R.W.1 Official of the RTO and Ex.R1 driving licence extract register produced by them. The driver of the first respondent obtained necessary batch endorsement only on 21.04.2010 much later to the accident. As the driver was not having valid licence, the insurer is not liable to pay any compensation. The interest awarded by the Tribunal at the rate of 9% is not proper. Hence, the third respondent Insurance Company sought for entertaining the appeals and to set aside the award passed by the Tribunal.

9. On the other hand, the learned counsel appearing for the petitioners/claimants contended that the accident occurred only due to the negligence of the first respondent vehicle driver and as such the petitioners are entitled to get compensation from the respondents. Hence, they sought for dismissal of these appeals.

10. The Tribunal on the basis of available evidence on record found that the accident occurred only due to the negligence of the first respondent van driver. The eye witness to the occurrence P.W.2 stated that on 17.04.2010 at about 7.30 p.m., while he was standing in the Tea Stall, he saw two persons proceedings in a two wheeler and at that time, a Tempo Traveller van came at high speed dashed against the motor cycle in which two persons were travelling. According to P.W.2, the rash and negligent driving by the Tempo Traveller van driver alone caused the accident. The Police registered Ex.P1 First Information Report against the driver of the van only. The only person who deposed as R.W.1 has not stated specifically any thing about the manner in which the accident occurred. In fact, he is not an eye witness to the occurrence. As such, the eye witness account of P.W.2 is not contradicted by any other evidence. As the Police also registered the case against the driver who is the second respondent, it is just and proper to hold that the first respondent company driver alone is responsible for the accident.

11. The learned counsel appearing for the third respondent-Insurance Company contended that the driver of the first respondent was not having necessary batch entry to drive the commercial vehicle.

The respondents examined the Motor Vehicle Inspector as R.W.1 and he produced the Extract of Driving Licence Register as Ex.R1. As per the entries found in the said register, the driver of the first respondent vehicle Vinoth Kumar was having licence to drive the Light Motor Vehicle. Ex.R1 is extract of the driving licence register, it is stated by the Tribunal that in Ex.R1 column No.10, it is stated that the said driver Vinoth Kumar got valid batch entry. However, disputing the same, the learned counsel appearing for the third respondent contended that the batch endorsement is made subsequent to the date of accident only. Hence, he sought for setting aside the award amount.

12. However, refuting the same, the learned counsel appearing for the petitioners contended that even though, a person was holding Light Motor Vehicle licence, he can drive all vehicles including transport vehicles and not separate endorsement is required to drive the such commercial vehicle. In support of the same, he relied upon the Apex Court decision reported **in KUKUND DEWANAGAN Vs. ORIENTAL INSURANCE COMPANY LIMITED reported in AIR 2017 SUPREME COURT 3668,** wherein it has held as follows:-

> "(iv) The effect of amendment of Form 4 by insertion of "transport vehicle" is related only to

> the categories which were substituted in the year 1994 and the procedure to obtain driving licence for transport vehicle of class of "light motor vehicle" continues to be the same as it was and has not been changed and there is no requirement to obtain separate endorsement to drive transport vehicle. And if a driver is holding licence to drive light motor vehicle, he can drive transport vehicle of such class without any endorsement to that effect."

It is clear from the above said ruling that if a person possessed driving licence for driving Light Motor Vehicle, there is no need to obtain any separate endorsement to drive the transport vehicles. In such circumstances, it is clear that the contention of the third respondent-Insurance Company that the award passed against them is to be set aside for the reason that the driver of the first respondent vehicle was not having effective driving licence to drive the commercial vehicle is unsustainable and the same is to fail.

13. The Tribunal has considered the evidence on record and arrived at just and fair compensation, there is no cross objection or appeal filed by the claimants. In such circumstances, this Court finds no grounds to interfere with the quantum of award passed by the Tribunal. Thus, the appeals are liable to be dismissed. The point is answered accordingly.

14. **CMA.No.2003 of 2017(MCOP.No.1542 of 2010):**

In the result, the civil miscellaneous appeal is dismissed. No costs. The amount of Rs.3,21,200/- awarded by the Tribunal, dated 15.04.2013 made in MCOP.No.1542 of 2010 on the file of the Motor Accident Claims Tribunal/Principal District Court, Cuddalore, is hereby confirmed. The penal interest imposed by the Tribunal is hereby set aside.

15. **CMA.No.2004 of 2017(MCOP.No.2204 of 2011):**

In the result, the civil miscellaneous appeal is dismissed. No costs. The amount of Rs.4,70,000/- awarded by the Tribunal, dated 15.04.2013 made in MCOP.No.2204 of 2011 on the file of the Motor Accident Claims Tribunal/Principal District Court, Cuddalore, is hereby confirmed. The penal interest imposed by the Tribunal is hereby set aside.

rrg 21.03.2018

To
The Principal District Judge,
The Motor Accident Claims Tribunal,
Guddalore.

S.BASKARAN.J.,

rrg

C.M.A.Nos.2003 & 2004 of 2017

Dated: 21.03.2018