

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.09.2018

CORAM:

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.826 of 2011 and
M.P.No.1 of 2011

Bajaj Allianz General
Insurance Company Ltd.,
5th Floor, Prince Towers,
25/26, College Road,
Nungambakkam,
Chennai - 600 006

...Appellant/2nd Respondent

Vs

1.Renganayagi
2.Vijayakanth
3.Vijayalakshmi (minor)
4.Manikandan (minor)
5.Mythili (minor)

[Minor petitioners 3 to 5 rep.
By mother & N.F.Renganayagi]

6.Kamatchiammal
7.Naramban
8.K.T.Antony

[R8 set exparte in
Lower Court]

...Respondents/Petitioners 1 to 7/
1st Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Award passed by the Motor Accident Claims Tribunal [II Court of Small Causes], Chennai made in M.C.O.P.No.522 of 2006 dated 09.12.2009.

For Appellant : Ms.R.Sree Vidhya
For Respondents : Mr.N.M.Elumalai for R1 to R6
R7 - Died
R8 - Exparte

J U D G M E N T

The instant appeal has been filed by the Insurance Company challenging the award dated 09.12.2009 passed by the Motor Accident Claims Tribunal [II Court of Small Causes, Chennai] Chennai in M.C.O.P No.522 of 2006.

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

(i) One Elumalai died on 16.01.2005 as a result of an accident caused by a vehicle, viz., Bajaj M 80 bearing

registration No.TN 22 M 5029 owned by the 8th respondent and insured with the appellant.

(ii) The dependents of the deceased Elumalai, who are the 1st to 7th respondents in this appeal, preferred a claim before the Motor Accident Claims Tribunal in M.C.O.P.No.522 of 2006 seeking a claim of Rs.7,00,000/-, which was restricted to Rs.5,00,000/-. The Motor Accident Claims Tribunal by its award dated 09.12.2009 in M.C.O.P.No.522 of 2006 directed the Appellant to pay the respondents 1 to 7, a sum of Rs.6,00,000/- together with interest at the rate of 7.5% per annum from the date of claim till the date of realisation.

(iii) Aggrieved by the award dated 09.12.2009 passed in MCOP No.522 of 2006, the instant appeal has been filed by the Insurance Company.

3. Heard Ms.R.Sreevidhya, learned counsel for the appellant and Mr.N.M.Elumalai, learned counsel for the Respondents 1 to 7. Till date, notice has not been served on the 8th respondent, who is the owner of the vehicle involved in the accident. Since the appeal pertains to the year 2011 and this Court is going to confirm the Award, there is no necessity to serve notice on the 8th respondent.

4. According to the learned counsel for the appellant, the primary ground for challenge in the instant appeal is that the doctrine of 'Pay and Recovery' was not applied by the Tribunal while passing the impugned award. Further, according to her, the driver of the vehicle, who was involved in the vehicle does not possess a valid driving licence. Since there was a policy violation, the Tribunal ought to have granted 'Pay and Recovery' to the appellant.

5. Per contra, the learned counsel for the Respondents 1 to 7 would submit that at the time of the accident, the driver of the vehicle was possessing a valid Learner's Licence, which was also marked along with Investigation Report of the Insurance Company as Ex.R.4 before the Tribunal. According to him, a valid L.L.R. is also a valid licence.

6. This Court has examined the Impugned Award, which is under challenge in this present Appeal. In the decision laid down by the Hon'ble Supreme Court between National Insurance Co. Ltd., V. Swaran Singh and Others reported in 2004 ACJ 1, it is held that once the 'Driver of the vehicle possess a valid Leaners Licence, it will not amount to any Insurance Policy violation', for useful reference, the relevant portion of the order is extracted hereunder:

"102[viii]. If a vehicle at the time of accident was driven by a person having learner's licence, the insurance companies would be liable to satisfy the decree."

7. Therefore, in view of the settled law, as laid down by the Hon'ble Supreme Court mentioned supra, the contention of the learned counsel for the appellant that there is a policy violation on the part of the 8th respondent cannot be accepted by this Court. In the considered opinion of this Court, the Tribunal has rightly not granted Pay and Recovery rights to the appellant under the impugned award.

In the result, there is no merit in the instant Appeal. Accordingly, the present Civil Miscellaneous Appeal is dismissed leaving the parties to bear their own costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

ssd

To

1. The Motor Accident Claims Tribunal,
[II Court of Small Causes], Chennai

2.The Section Officer,
VR Section,
High Court, Madras.

+lcc to Mr.N.M.Elumalai, Advocate SR.NO.65129

+lcc to Ms.R.Sreevidhya, Advocate SR.NO.65268

NM(CO)

sm:12.11.2018

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