

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :12.09.2018

CORAM:

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.1742 of 2009

AND

M.P.NO.1 OF 2009

The Bajaj Allianz General Insurance Co. Ltd.,
4th Floor, Prince Tower,
No.25/26, College Road,
Nungambakkam, Chennai - 600 006.

...Appellant

Vs

1.K.Devaraj

2.R.Gowsic Narendiran

...Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 19th day of March 2008, made in M.C.O.P.No.561 of 2005 on the file of the Motor Accident Claims Tribunal cum (Additional District cum Sessions Judge, Fast Track Court No.3) at Poonamallee.

For Appellant : Mr.K.Padmanabhan

For Respondent : Mr.K.Varadha Kamaraj (for R1)

: R2 - Batta with Petition not ready in notice

JUDGMENT

The instant appeal has been filed by the Insurance Company challenging the Award dated 19.03.2008, passed by the Motor Accident Claims Tribunal cum (Additional District cum Sessions Cum-Fast Track Court No.3) at Poonamallee, in M.C.O.P.No.561 of 2005.

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

(i)The first respondent sustained injuries as a result of an accident caused by a mini door van owned by the 2nd 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.561 of 2005, seeking a compensation of Rs.2,00,000/-.

(iii)The Motor Accident Claims Tribunal, by its Award dated 19.03.2008 in M.C.O.P.No.561 of 2005, directed the Appellant to pay the first respondent a sum of Rs.59,000/- together with interest at the rate of 7.5% per annum from the date of claim, till the date of realization and also awarded costs.

3.Aggrrieved by the Award dated 19.03.2008, passed by the Motor Accident Claims Tribunal, the instant appeal has been filed by the Insurance Company.

4.Heard Mr.K.Padmanabhan, learned Counsel for the Appellant and Mr.K.Varadha Kamaraj, learned Counsel for the first respondent. Despite service of notice on the second respondent and his name being printed in the cause list, today there is no representation on his side.

5.According to the learned Counsel for the Appellant, the driver of the vehicle owned by the second respondent which was involved in the accident did not possess a valid driving license. According to learned Counsel for the Appellant it has been the consistent stand of the appellant that the driver of the vehicle did not possess a valid driving license. He drew the attention of this Court to the counter statement filed by the Appellant before the Tribunal and submitted that they have specifically pleaded that the driver of the vehicle owned by the second respondent did not possess a valid driving license at the time of the accident.

6. The learned Counsel for the appellant further contended that despite notice sent to the second respondent calling upon him to produce copy of the driving license of his driver, the respondent even after receiving the said notice, failed to produce the same. The notice to produce dated 30.05.2007 was also marked as exhibit before the Tribunal which is Ex.R.2 and acknowledgment card for the said notice was marked as Ex.R.3.

7.According to the learned Counsel for the Appellant, the second respondent remained exparte even before the Tribunal and even in this appeal he has remained exparte. Therefore, it can be conclusively established that the driver of the vehicle owned by the second respondent did not possess a valid driving

license. Even though the Appellant was able to prove that the driver of the vehicle did not possess a valid driving license, the Tribunal has not granted pay and recovery rights to the Appellant.

8. Since the issue involved in this appeal does not concern the rights of the first respondent, there is no necessity to hear the first respondent in this appeal. The second respondent has remained *exparte* both before the Tribunal as well as before this Court.

9. This Court has examined the impugned Award and after hearing the submissions of the learned Counsel for the Appellant, observes the following:

(a) It has been the consistent stand of the appellant both before the Tribunal as well as in this appeal that the driver of the vehicle owned by the second respondent did not possess a valid driving license at the time of the accident.

(b) The Appellant had also called upon the owner of the vehicle namely the second respondent by their notice dated 30.05.2007 which is marked as Ex.R.2 to produce a copy of the driving license and the said notice was also duly acknowledged by the second respondent and the acknowledgment card was marked as Ex.R.3 before the Tribunal.

(d) Despite receipt of the said notice, the second respondent has not produced the driving license of his driver who drove his vehicle rash and negligently resulting in the accident.

(e) The Tribunal has also not framed any issue regarding whether the driver of the vehicle owned by the second respondent did possess a valid driving license or not under the impugned Award. There is also no finding given by the Tribunal on this issue.

10. Therefore, this Court, after considering Ex.R.2 and Ex.R.3 as well as the counter statement filed by the Appellant before the Tribunal comes to the irrebuttable conclusion that the driver of the vehicle owned by the second respondent did not possess a valid driving license at the time of the accident. Therefore, in the considered view of this Court, pay and recovery rights ought to have been granted in favour of the Appellant by the Tribunal under the impugned Award following the judgment of this Court in the case of *Nazar Ali Vs. Santhana Srinivasan* reported in 2013 (2) TNMAC 641, wherein, it is held as follows;

"For the purpose of recovering the Compensation amount from the insured, the Insurer shall not be required to file a Suit. It may initiate a proceeding before the concerned

Executing Court as if the dispute between the Insurer and the insured was the subject matter of determination before the Tribunal and as if the issue is decided against the owner and in favour of the Insurer. A notice shall be issued to the insured to furnish security for the entire amount. The offending vehicle shall be attached as a part of the security. If necessity arises, the Executing Court shall take assistance of the concerned Regional Transport Authority. The Executing Court shall pass appropriate Orders in accordance with law as to the manner in which the insured/Owner of the vehicle shall make payment to the Insurer. In case there is any default, it shall be open to the Executing Court to direct realisation by disposal of the securities to be furnished or from any other property of the insured."

11. In the result, the appeal is partly allowed by permitting the Appellant to recover the Award amount paid to the first respondent from the second respondent in accordance with law, as per the mode of recovery rights granted to the Insurance Company as per the judgment reported in 2013 (2) TNMAC 641 referred to supra. No costs. Consequently, connected M.P.No.1 of 2009 is closed.

12. The appellant insurance company is directed the deposit the entire award amount along with accrued interest to the credit of MCOP, if not deposited, within a period of four weeks from the date of receipt of a copy of this order. On such deposit, being made, the 1st respondent is permitted to withdraw the same on filing an appropriate application.

Sd/-

Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

mtl/msr

To

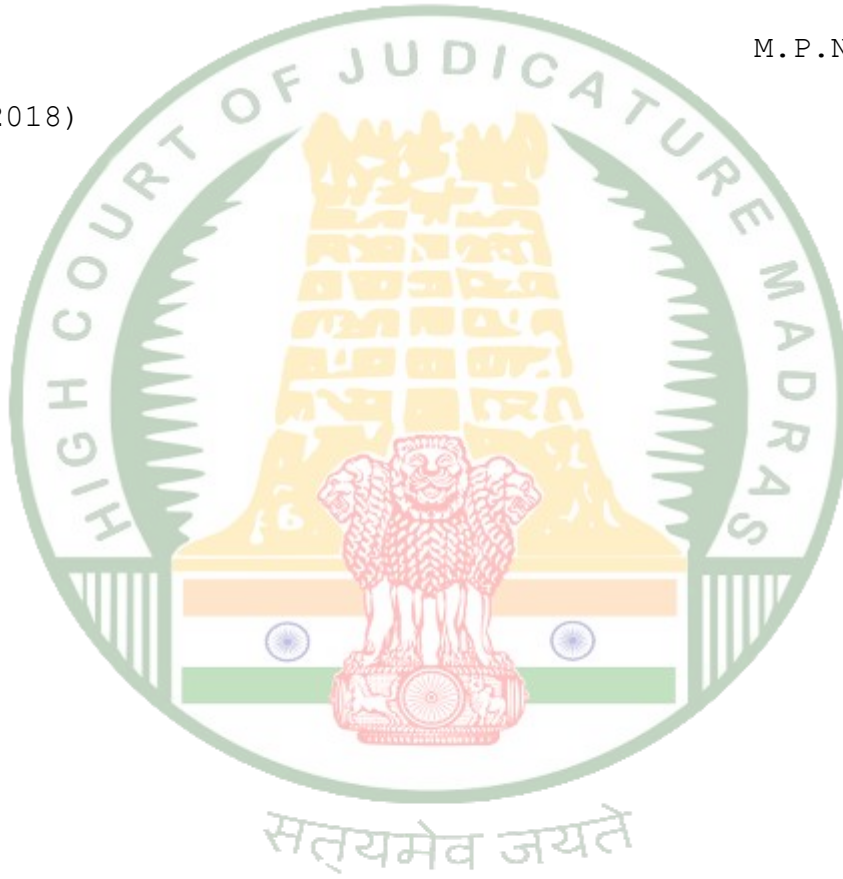
1.The Motor Vehicles Accident Claims Tribunal,
Additional District cum Sessions
Cum-Fast Track Court No.3
Poonamallee.

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

+1cc to Mr.Padmanabhan, Advocate, S.R.No. 63266
+1cc to Mr.Selvaraj, Advocate, S.R.No.63644

C.M.A.No.1742 of 2009
AND
M.P.NO.1 OF 2009

MG (CO)
GN(22/10/2018)



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