IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.06.2019

CORAM:

THE HON'BLE MR. JUSTICE R.MAHADEVAN

Civil Miscellaneous Appeal No.3546 of 2008
& M.P.No.1 of 2008

Bajaj Allianz General Insurance Co. Ltd.,
25/26 College Road, Nungambakkam,
Chennai 600 034 ... Appellant /2nd Respondent

..Vs..

1. Radha ...1st Respondent/Petitioner
2. Sarathy ...2nd Respondent/1st Respondent
(R-2 exparte before the Tribunal and notice may be dispensed with) ... Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree, dated 12.02.2008, made in MCOP No.1323 of 2006 on the file of the Motor Accident Claims Tribunal, V Court of Small Causes, Chennai.

For Appellant : Mr. N.Vijayaraghavan

For Respondents : Mr. K.Varadhakamaraj, for R-1
R2-Exparte

J U D G M E N T

This Civil Miscellaneous Appeal is filed by the Insurance company challenging the liability as well as quantum of compensation.

Brief facts:-

2. The claimant / the first respondent, aged 65, self-employed, earning a sum of Rs.4,880/-, met with an accident on 17.03.2006.

2.1. The first respondent herein / claimant was a pedestrian and at that point of time, a two-wheeler bearing Registration No.TN09-AH-3148 hit him, due to which, he sustained grievous injuries and suffered fracture on the right leg and multiple injuries all over the body. Claiming a sum of Rs.3,00,000/-, he filed a petition for compensation.

3. The finding of the Tribunal was that the accident took place only on account of the rash and negligent driving on the part of the driver of the two-wheeler. The compensation of Rs.55,500/- has been awarded under the following breakup details:-

Medical Expenses	-	Rs. 500/-
Transport expenses	-	Rs. 1,000/-
Extra Nourishment	-	Rs. 1,000/-
Attendant charges	-	Rs. 1,000/-
Loss of earning during treatment period	-	Rs. 2,000/-
Loss of future earnings on account of per. dis.	-	Rs. 45,000/-
Pain and suffering	-	Rs. 5,000/-
		Rs. 55,500/-

4. The main contention of the learned counsel for the appellant / Insurance Company is that it should have been totally exonerated from liability, when the licence of the driver of the two-wheeler was only LMV and not authorized to drive a two-wheeler.

5. The Tribunal has taken note of the evidence of R.W.1 and Ex.R-1 and rendered a finding that the rider had licence to drive the LMV, but it is not proved that the alleged two-wheeler was with gear or without gear and drawing adverse inference, the Tribunal has fixed the liability on the insured and insurer.

6. This Court is of the view that the adverse inference drawn by the Tribunal is not correct, since the Tribunal failed to appreciate the breach on the terms and conditions of the Insurance Policy. In the terms and conditions of the Insurance Policy, it was made clear that a person riding a two-wheeler should necessarily possess valid and effective licence, i.e., endorsement to ride Motor Cycle With Gear (MCWG) as the same requires skills of balancing the vehicle and changing gears and multiple actions at the same time. The vehicle, admittedly, is a motorcycle and hence no further proof can be expected of by the Tribunal. Further, the adverse inference taken is against Section 5 of the M.V. Act.

7. Added to the above, the adverse inference drawn against the appellant is directly against the dictum laid down by the Supreme Court in the case of 2007 (6) MLJ 1477 (Oriental Insurance Company Limited v. Syed Ibrahim) and this Court in the case of 2008 (1) CTC 50.

8. However, this Court is of the view that the burden of proof placed on the insurer was put on a higher pedestal, making it thereby, virtually impossible for the insurer to avoid liability. In a series of judgments, it was made clear by various High Courts that such construction of the statute was only in keeping with the mandate of Parliament to ensure that the victims were provided compensation by the insurer rather than be left to the fate of seeking enforcement from the owners of vehicles. The slant of the courts was evident and it was made clear as well that compulsory motor insurance was to provide relief to the victims and if so, the courts have to necessarily lean in favour of this mandate. Hence, the appellant herein is directed to pay and recover the same from the owner of the vehicle.

9. In the result, the Appeal filed by the Insurance Company, is allowed, so far as the liability is concerned and it is dismissed, so far as the issue regarding the quantum of compensation is concerned.

10. The appellant / Insurance Company shall deposit the entire compensation amount, along with interests and costs, as awarded by the Claims Tribunal, less the amount already deposited, if any, within a period of four weeks, from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal is directed to transfer the deposited amount to the Savings Bank Account of the claimant / injured / first respondent herein, through RTGS, within one week thereafter. Consequently, the connected MP is closed.

11. It is made clear that the appellant herein is permitted to recover the compensation amount from the owner of the vehicle / second respondent herein. No costs. Consequently, the connected MP is closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

To

1. Motor Accident Claims Tribunal,
   V Court of Small Causes, Chennai.

2. The Section Officer,
   V.R.Section, High Court, Madras.

+1cc to Mr.M.B.Gopalan, Advocate Sr.54645
+1cc to Mr.K.Varadha Kamaraj, Advocate Sr.53175

C.M.A.No.3546 of 2008
& M.P.No.1 of 2008

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srg 04/02/2020