IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.02.2019

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.2313 of 2011
and
M.P.No. 1 of 2011

M/s.Bajaj Allianz General Insurance Co.Ltd.,
Rep. By its Branch Manager,
Surya Bala Auto Agencies,
No.546-B, Kottur Road,
Pollachi - 642 006.

....Appellant/3rd Respondent

Vs

1. T.Siva Sanjai (Minor)
(Rep. By his Father &
NF P.Thangavel) ...1st Respondent/Petitioner

2. Mr.Anbu Shikamani

3. Mr.C.Velusamy
(Respondents 2 & 3 set ex parte
in Lower Court and hence Notice
may be dispensed with) ....Respondents 2 & 3/
Respondents 1 & 2

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree in M.C.O.P.No.137 of 2009 dated 22.03.2011, on the file of the Motor Accidents Claims Tribunal, Subordinate Court, Udumalapet.

For Appellant : Mr. N.Vijayaraghavan

For Respondents : No Appearance for R1
: R2 & R3 set Ex parte.

JUDGMENT

The Claimant is the first respondent and the Insurance Company is the appellant herein. Challenging the Award passed by the Tribunal the Insurance Company has preferred the appeal on the question of liability as well as quantum.

2. The brief facts of the case are as follows:

(i) On 02.10.2007 at about 6.45 a.m, while the 1st respondent/claimant, T.Siva Sanjai was walking on the extreme left side of the Thamaraipadi Main Road along with his mother and brother, and were nearing Periya Nalli Gounder Thottam to the east of Thamaraipadi, a Bajaj Platinum Vehicle, bearing Registration No.TN-41-W-7760, which was driven by the 2nd respondent in a rash and negligent manner, at high speed and without blowing any horn dashed against the 1st respondent from behind. The 1st respondent was thrown into air and fell down on the road, as a result of which, he sustained grievous injuries on the head, back bone, hip and lacerations over face, both the hands and legs and other multiple injuries all over the body. The accident had taken place due to the rash and negligent driving of the bike driver.

(ii) Therefore, the claimant preferred M.C.O.P.No.137 of 2009 dated 22.03.2011, on the file of the Motor Accidents Claims Tribunal, Subordinate Court, Udumalpet claiming compensation of Rs.6,00,000/-.

3. The Insurance Company filed a counter statement alleging that at the time of the accident the driver of the vehicle / the1st respondent before the Tribunal was not in possession of any valid driving license which is in breach of the policy condition and therefore the appellant/insurer cannot be held liable.

4. Before the Tribunal, the claimant examined one witness P.W.1 and marked Exhibits Ex.P1 to Ex.P6. The Insurance Company examined witnesses R.W.1 and R.W.2 and marked Exhibits Ex.R1 to Ex.R5.

5. On the basis of the oral and documentary evidence placed before it, the Tribunal held that the owner of the vehicle and Insurance Company are jointly and severally liable to compensate the claimant and passed an award for a sum of Rs.66,200/-. Aggrieved over the liability and quantum of compensation, the appellant / Insurance Company has filed the present appeal.

6. The learned counsel for the appellant Insurance Company contented that it is the specific case of the Insurance company before the Tribunal that at the time of the accident, the 1st respondent before the Tribunal, namely Anbusigamani was not in possession of a valid driving licence. Though notice was issued

to the respondents to produce the licence, however, the respondents did not come forward to furnish the copy of the same and this aspect has not been taken note of by the Tribunal in proper perspective while passing the award.

7. After perusing the relevant records, it is seen that the insurer T.Siva Sanjai (Minor) aged 9 years at the time of the accident sustained injuries in the accident and based upon Ex.P5 wound certificate, produced before the Tribunal, the Tribunal awarded compensation of Rs.36,200/- towards medical expenses and towards pain and suffering a sum of Rs.25,000/- was awarded and a sum of Rs.5,000/- was awarded towards other expenses in all totalling to Rs.66,200/-.

8. Taking into consideration, the injuries sustained by the injured claimant and also keeping in mind the age of the claimant, the amount of compensation awarded by the Tribunal appears to be reasonable one and cannot be said to be on the higher side.

9. On the point of violation of the terms and conditions of the policy, it is the specific case of the insurer that, at the time of the accident the driver of the bike was not in possession of a valid driving licence. In order to prove the said fact notice was issued to the owner of the vehicle as well as the driver of the vehicle in, viz., Ex.R2 to R5 and which was returned as un-served.

10. The Motor Vehicle Inspector was examined as R.W.1, who has stated that the driver of the vehicle did not produce the licence. Further, R.W.2, the Regional Transport Officer has stated that in the current state of technology, it is not possible to scrutinize and produce the licence. On a holistic perusal of Exs.R2 to R5 coupled with the evidence of R.Ws 1 and 2 and the failure of the owner of the vehicle to produce the licence of the person, who drove the vehicle inspite of notice having been served on the owner of the vehicle, this Court is of the considered view that the non-production of the licence of the driver would only lead to the irrefutable conclusion that the driver of the vehicle was not in possession of a valid driving licence. Had the driver of the vehicle been in possession of a valid driving licence, the same would have been produced. Therefore, the materials on record, both oral an documentary, support the case of the Insurance Company relating to the contention about the driver of the bike not being in possession of a valid driving licence.

11. For the reason aforesaid, this Court is of the considered view that the liability to compensate squarely falls

on the owner of the vehicle. Taking into consideration all the above facts into account, this Court is of the considered view that this is a fit case where the appellant/insurer shall pay the compensation awarded by the Tribunal, as confirmed by this Court, but recover the same from the owner of the vehicle in accordance with law.

12. This Civil Miscellaneous Appeal is allowed in part with the aforesaid observation and direction. It is stated that the entire amount of compensation has been deposited. The Tribunal is directed to transfer the amount of compensation as confirmed above, directly to the bank account of the claimant through RTGS within a period of two weeks from the date of receipt of a copy of this order. Consequently, the connected Miscellaneous Petition is closed. However, there shall be no order as to costs.

Sd/-
Assistant Registrar(AD IV)

//True Copy//

Sub Assistant Registrar

ebsi/klt
To

1.The Motor Accidents Claims Tribunal,
Subordinate Judge Court,
Udumalapet.

2.The Record Clerk,
VR Section,
High Court, Madras.

+1cc to Mr.M.B.Gopalan, Advocate Sr.18434

C.M.A.No.2313 of 2011
and
M.P.No. 1 of 2011

mb[co]
srg 7/6/2019