IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :07.03.2019

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

CMA.No.2374 of 2011
and
MP.No.1 of 2011

Bajaj Allianz General Insurance Co.,
Plot No.6,
No.33, Subramaniam Street,
Chennai - 600 018. ..Appellant/ 2nd Respondent

Versus

1.G.Kamalakannan ..1st Respondent/ Petitioner

2.Gopal ..2nd Respondent/ 1st Respondent

[2nd Respondent exparte in Lower Court,
Notice may be dispensed with)

Prayer: Civil Miscellaneous Appeal has been filed under section 173 of Motor Vehicle Act, 1988 against the Judgment and Decree dated 27.02.2008 made in M.C.O.P.No.1066 of 2004 on the file of the Motor Accident Claims Tribunal, Fast Track Court No.5, Thiruvallur.

For Appellant : Mr.S.Manohar
For Respondents : No appearance (for R1)
: Exparte (for R2)

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the award dated 27.02.2008 made in M.C.O.P.No.1066 of 2004 on the file of the Motor Accident Claims Tribunal, Fast Track Court No.5, Thiruvallur, in so far as it relates to fixing the liability on their part to pay the compensation amount.

2.The appellant is the second respondent in M.C.O.P.No.1066 of 2004 on the file of the Motor Accident Claims Tribunal, Fast Track Court No.5, Thiruvallur. The first respondent/ claimant has filed the above said claim petition, claiming a sum of Rs.5,00,000/- as compensation for the injuries sustained by him in the accident that took place on 09.03.2004.

3.According to the claimant, on 09.03.2014, when he was travelling as a pillion rider in the motor cycle bearing Registration No. TN 20 L 8033, due to the rash and negligent driving of the Driver, the vehicle skidded and he fell down from the vehicle resulting in sustaining bodily injuries.

4.The claim was resisted by the Insurance company contending that the averments made in the claim petition are false. The insurance company also contended that the two wheeler bearing Regn.No.TN 20 L 8033, which was owned by the father of the claimant. On the date of accident, the claimant did not travel as a pillion rider. On enquiry, it came to light that the claimant, while driving the two wheeler hit against a Scorpio Car. Since it was due to the negligent of the petitioner the accident had occurred, the Scorpio Car did not stop and left the place. The first information report in this case was registered after 4 days from the date of alleged accident. Even otherwise, the insurance policy does not cover the pillion rider. As the claimant was not in possession of a valid driving licence at the time of accident, he had set up his relative Jayakumar to make it as if the said Jayakumar had driven the vehicle in which the claimant travelled as a pillion rider. The appellant also denied the age, occupation and income of the claimant. Therefore, the appellant/Insurance Company has prayed for dismissing the claim petition.

5.Before the Tribunal, on the side of the claimant, he examined himself as P.W.1 besides examining one Dr.Thiyagarajan as PW.2 and six documents were marked as Ex.P1 to Ex.P6. On the side of the respondents, one Churchil Kumar/Doctor of S.V.Hospital was examined as RW.1, one Doctor Senthil was examined as RW.2, one Michel Maria Antony, Senior Executive officer of the insurance company was examined as RW.3.

6.The Tribunal, after analysing the oral and documentary evidence adduced on either side and as many as citation quoted by the claimant counsel, has come to the conclusion that the policy is package policy and by coming to such a conclusion, the Tribunal fixed the liability on the part of the Insurance Company. Upon appreciation of the evidence made available, the Tribunal has awarded a total sum of Rs.1,40,000/- as compensation under structural formula. Questioning the same, the present appeal has been filed by the Insurance Company.

7.I have heard the learned counsel appearing for the appellant and perused all the materials available on record.

8.Taking into consideration of the evidence of injured/PW1 coupled with the oral and documentary evidence of P1, P2, P3, and P4, the Tribunal has held that the claimant has travelled in the above said motorcycle as pillion rider and the accident has taken place due to rash and negligent manner of driving of the driver of the two wheeler and accordingly, held that the owner of the vehicle as well as the insurance company are jointly and severally liable to pay the compensation.

9.Aggrieved against the said award of the Tribunal, the Insurance company has preferred this appeal, by challenging the liability as well as the quantum of compensation.

10.The learned counsel appearing for the appellant/Insurance company would contend that the injured did not travel as a pillion rider and to substantiate the same reliance was placed on Ex.R2/Accident Register copy of the claimant wherein it was stated that the two wheeler had hit a Scorpio Car which resulted in the accident. According to the counsel for the appellant, the claimant himself had driven the two wheeler on the date of accident without any valid licence. The two wheeler was owned by none other than father of the claimant namely Gopal, who is arrayed as first respondent in the claim petition. The tribunal has erroneously come to the conclusion that the claimant traveled in the vehicle as pillion rider without any valid evidence. Further, Ex.R3/ copy of the policy of insurance indicate that it is a comprehensive policy and it will not cover the injuries sustained by a pillion rider.

11.After heard the learned counsel for the claimant. The manner in which the accident had taken place is clearly spoken to by the claimant, as PW1. The Tribunal, on considering the deposition of PW1, Ex.P1/first information report, discharge summary, Ex.P2 has arrived at a correct conclusion that the accident had occurred due to the rash and negligent driving of the driver of the two wheeler in which the claimant travelled as a pillion rider. The claimant was also examined by PW2/Doctor, to prove the nature of injuries sustained by him. Even though the appellant claimed that the policy does not cover the injuries sustained by the claimant, it was rightly rejected by the Tribunal, by holding that it is a package policy and not an Act policy and the allegation of the Insurance Company that there is a need to pay additional premium to cover the injuries sustained by the claimant has not been established in a manner known to law. Therefore, the findings of the Tribunal relating to liability of the appellant is confirmed.

12.As regards the quantum, this Court is of the view that a sum of Rs.1,40,000/- awarded by the Tribunal to the claimant is befitting the nature of injuries sustained by him and it is neither excessive nor exorbitant warranting interference by this Court.

13.In the result, the Civil Miscellaneous Appeal filed by the appellant/Insurance company is dismissed by confirming the Judgement and Decree award dated 27.02.2008 made in M.C.O.P.No.1066 of 2004 on the file of the Motor Accident Claims Tribunal, Fast Track Court No.5, Thiruvallur. The appellant/Insurance Company is directed to deposit the award amount as determined by the Tribunal together with interest 7.5%, after adjusting amount, if any, already deposited within a period of eight weeks from the date of copy of this Judgment. On such deposit being made, the claimant/first respondent is entitled to withdraw the same with accrued interest, less the amount if any, already withdrawn. No costs. Consequently, connected Miscellaneous Petition is closed.

klt

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To
1. The Additional District Judge,
   Motor Accident Claims Tribunal,
   Thiruvallur.

2. The Section Officer,
   V.R. Section, High Court,
   Madras - 104.

+1cc to Mr.S.Manohar, Advocate, SR.No.21325

CMA.No.2374 of 2011

Kak(03/07/2019)