

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 07.01.2019
CORAM
THE HONOURABLE MRS. JUSTICE R. HEMALATHA
C.M.A.NO.478 OF 2011
and
M.P.No.1 of 2011

M/s. Bajaj Allianz General Insurance Co. Ltd.,
People's Park
Government Arts College Road,
Coimbatore ...Appellant

Vs.

1. Jamesha
2. Sivakumar
3. Ramakrishnan
(Respondents 2 & 3 ex parte in Lower Court) ...Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act 1988, against the Judgment decree in M.C.O.P. No.809 of 2007 dated 01.07.2010, on the file of the Motor Accidents Claims Tribunal, II Additional Subordinate Court, Coimbatore.

For Appellant : Mr.M.B. Gopalan

For Respondents : Mr.Ma.P.Thangavel for R1
R2 & R3 - Exparte.

JUDGMENT

The appellant Bajaj Allianz General Insurance Co. Ltd., is the third respondent in M.C.O.P. No.809 of 2007 dated 01.07.2010, on the file of the Motor Accidents Claims Tribunal, II Additional Subordinate Judge, Coimbatore. The first respondent /claimant filed the claim petition under Section 166 (1) of the Motor Vehicles Act., seeking compensation of Rs.3,00,000/- for the injuries sustained by him in a road accident that took place on 30.01.2007.

2. The brief case of the first respondent / claimant is as follows:

On 30.01.2007, the first respondent / claimant was riding his two wheeler TVS 50 bearing Registration No.TN-37-S-8744 on

the Palghat Main road. At about 5.40 p.m., when he was nearing Athupalam Periyar Statue, a speeding Hero Honda bearing registration No.TN-37-AS-5495 hit the two wheeler ridden by the first respondent / claimant, as a result of which, he sustained grievous injuries all over his body. According to the first respondent/claimant, the rash and negligent riding of the rider of the two wheeler (second respondent in the appeal) bearing registration No. TN-37-AS-5495 was the cause of the accident and that since the third respondent in the appeal / owner of the vehicle had insured the said vehicle with the present appellant, all of them are jointly and severally liable to pay compensation of Rs.3,00,000/- to the first respondent / claimant.

3. The Respondents 2 and 3 (Respondents 1 & 2 in M.C.O.P) remained absent before the tribunal and therefore, they were set exparte. The present appellant contested the claim petition.

4. The learned II Additional Subordinate Judge, Coimbatore, after analysing the evidence on record, awarded a compensation of Rs.71,183/- together with interest at the rate of 7.5% to the first respondent / claimant for the injuries sustained by him. Aggrieved over the orders passed by the tribunal, the appellant / third respondent has filed this present appeal.

5.Mr.M.B.Gopalan, learned counsel appearing for the appellant would contend that the rider of the two wheeler was not in possession of a valid driving license on the date of accident and though they have issued notice to the second and third respondents to produce a copy of the driving license, they did not produce the same. His further contention is that in the absence of the driving license, the Insurance Company is not liable to pay compensation to the claimant. As per the decision rendered in Oriental Insurance Co. Ltd., Vs. Nanjappan and others reported in AIR 2004SC 1630, it has been held that when there is no driving license, the Insurance Company should be directed to pay the award amount in the first instance and then recover the same from the owner of the two wheeler.

6. In the instant case, it is clear from the records that the appellant / Insurance Company had issued notice to the owner as well as the rider of the two wheeler bearing Registration No. TN-37-AS-5495 and in spite of receipt of the said notice, they did not produce the driving license. In fact, both of them remained absent before the tribunal and they were set exparte.

7. In the facts and circumstances of the present case, the Insurance Company is directed to pay the award amount in the first instance and then recover the same from the owner of the two wheeler in the same proceedings.

8. In the result,

(i) The appeal is allowed. No costs. Consequently, connected miscellaneous petition is closed.

(ii) The Bajaj Allianz General Insurance Co. Ltd., is directed to pay the award amount of Rs.71,183/- (Rupees Seventy one thousand one hundred and eighty three only) together with interest at the rate of 7.5% from the date of claim petition till the date of deposit to the first respondent / claimant and recover the same from the owner of the vehicle in the same proceedings.

(iii) On such deposit being made by the Insurance Company, the first respondent / claimant is entitled to withdraw the same, after following due process of law.

Sd/-

Assistant Registrar (CS-I)

//True Copy//

Sub Assistant Registrar

bga

To

1.II Additional Subordinate Judge,
Motor Accidents Claims Tribunal,
Coimbatore.

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

+1cc to Mr.Ma.P.Thangavel, Advocate, S.R.No. 1509

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