IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.10.2019

CORAM:

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.2076 of 2016
and
C.M.P.No.15158 of 2016

Bharti AXA General Insurance Co., Ltd.,
1st Floor, Ferns Icon, Survey No.28,
Doddanakudi Village, K.R.Puram, Hobli,
Bangalore - 37, Karnataka State. .. Appellant /3rd Respondent

Vs.

1. M.Ramesh ... 1st Respondent/Claimant
2. V.Kumar
3. K.Murugan .. Respondents 2 & 3/Respondents 1 & 2

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 29.02.2016 made in MCOP.No.351 of 2014 on the file of the Motor Accident Claims Tribunal (Special Subordinate Judge), Erode.

For Appellant : Mr.K.Poomalai

For R1 : Mr.M.Guruprasad

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the Insurance Company against the award of a sum of Rs.2,76,000/- towards compensation to the first respondent due to the injuries sustained by him in a motor vehicle accident.

2.The case in brief is as follows:

On the fateful day, i.e., on 15.05.2014, about 9.15 pm, the first respondent/claimant was walking along the left side of the Erode – Nasiyanur Road, near Sampath Nagar, Anna Theatre Pirivu. At that time, the minidor vehicle bearing Reg.No.TN-34-A-0853 belonging to the third respondent and insured with the appellant insurance company, came in a rash and negligent manner and hit against him. Due to the said impact, the first respondent/claimant sustained grievous injuries, for which, he filed a claim petition before the Tribunal claiming a sum of Rs.5,00,000/- as compensation. On consideration of the materials and evidence available on record, the Tribunal has awarded a total compensation of Rs.2,76,000/- with interest at the rate of 7.5% per annum from the date of petition. Challenging the same, the appellant Insurance Company has filed the present Civil Miscellaneous Appeal.

3.The learned counsel for the appellant Insurance Company has disputed the liability fastened on the insurance company to pay compensation, stating that the driver of the vehicle was neither possessing the valid driving licence to drive heavy vehicles nor having badge endorsement for the same and hence, he was not covered by any risk, pursuant to the insurance of the vehicle, at the time of accident. Hence the appellant is not liable to pay any compensation. On the other hand, he submitted that the compensation awarded by the Tribunal is excessive.

4.Per contra, the learned counsel for the first respondent/claimant has submitted that after properly analysing the materials and evidence, the Tribunal has passed the impugned judgment and hence the same does not require any interference in the hands of this Court.

5.Heard the learned counsel appearing for the appellant and the learned counsel appearing for the first respondent and perused the materials available on record carefully and meticulously.

6.It is the stand of the learned counsel for the appellant that the driver of the vehicle, at the time of accident, was not possessing the valid driving licence to drive the vehicle carrying commercial goods and thus, the third respondent/owner has violated the conditions of the policy and the rules framed under the Motor Vehicles Act, 1988 and hence, the appellant insurance company is not liable to pay compensation to the first respondent/claimant. The fact remained that the driver was possessing driving licence to drive light motor vehicles. Before the Tribunal, the appellant insurance company examined R.W.1 to R.W.3 and marked Exs.R1 to R8. Mr.Arulraja, Assistant of RTO Office, Erode has been examined as R.W.1 and R.W.3. He deposed before the Tribunal that the driver of the minidor vehicle was not issued with any badge to drive the commercial goods vehicle and hence, there was violation of policy conditions. With regard to this aspect, the learned counsel for the first respondent / claimant has relied upon the decision of the Hon'ble Supreme Court in the case of Kulwant Singh and others v. Oriental Insurance Company Limited, reported in (2015) 2 SCC 186 and submitted before the Tribunal that a driver who is having a valid licence to drive a light motor vehicle is authorised to drive a light goods vehicle as well. In the present case, it is seen that even though the vehicle in question is a commercial goods vehicle, it is a commercial goods light vehicle. Hence, the Tribunal has held that the non-possession of badge endorsement for driving commercial goods light vehicle by a person having licence to drive light motor vehicle is not a violation of policy conditions. In this connection, it would also be appropriate to refer to the judgment of the Hon'ble Supreme Court in the case of [Mukund Dewangan Vs. Oriental Insurance Company Ltd.,] reported in AIR 2017 SC 3668, wherein it has been held that a person who has a valid licence to drive a light motor vehicle can drive a vehicle of same category and obtaining endorsement or badge is not necessary. Thus, it is clear that the Insurance Company cannot be exonerated from its liability to pay compensation to the first respondent / claimant and hence the liability fixed by the Tribunal in this regard, is confirmed.

7.As regards the quantum of compensation, the Tribunal has relied upon the exhibits, evidence of witnesses, medical bills, treatment records, percentage of disability assessed by the Doctor and all other aspects in a proper perspective and has awarded the compensation under various heads to the claimant. Further, this Court is of the considered view that the amounts awarded towards various heads are reasonable and justifiable and hence the same are confirmed.

8.In the result, the Civil Miscellaneous Appeal is dismissed. No costs. The appellant Insurance Company is directed to deposit the entire award amount with interest and costs, as ordered by the 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 first respondent/claimant is permitted to withdraw the same on making proper application before the Tribunal. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

av/km

To

1. The Special Subordinate Judge,
   Motor Accident Claims Tribunal,
   Erode.

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

+1cc to Mr.K.Poomalaim Advocate, S.R.No. 88470

C.M.A.No.2076 of 2016
and
C.M.P.No.15158 of 2016

VBA(CO)
GN(03/09/2020)