

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09-03-2020

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

C.M.A. No.1814 of 2015

And

M.P.No.1 of 2015

The Manager,
Bajaj Allianz General Insurance Co. Ltd.,
25/26, Prince Towers,
College Road,
Chennai-600 006. ... Appellant/Respondent No.2

vs.

1.Maivizhiselvi ... Respondent No.1/Petitioner No.1
2.Sekar ... Respondent No.2/Petitioner No.2
3.M.Kandeeban ... Respondent No.3/RespondentNo.1

The Civil Miscellaneous Appeal is preferred under Section 173 of the Motor Vehicles Act, 1988, against the Award and decree dated 28.11.2014 passed in M.C.O.P.No.1229 of 2010 on the file of the learned District Judge, District Court No.II-cum-Motor Accidents Claims Tribunal, Kanchipuram.

For Appellant : Mr.J.Michael Visuvasam

For Respondents 1&2 : Not Ready in Notice

For Respondent-3 : No Appearance

J U D G M E N T

The present Civil Miscellaneous Appeal is filed mainly on the ground that the Tribunal fixed the liability on the appellant-Insurance Company, despite the fact that the appellant established that the rider of the vehicle was not possessing a valid driving license at the time of accident and he was holding an LLR License and as per the conditions attached, he must have accompanied a trained driver along with him as per Rule 3 of the Central Motor Vehicle Rules.

2. The accident occurred on 01.08.2009 at about 07.10 P.M., on Kanchipuram to Arakkonam Road, Ooverichatram. The

Baluchettichathram Police Station, Krishnagiri District registered a case in Crime No.251 of 2009.

3. As per the facts in brief, the rider of the Hero Hondo Motorcycle driven the same in a rash and negligent manner and also in high speed and the pillion rider in the Hero Honda Motorcycle bearing Registration No.TN-21-AC-4228 and the deceased girl fell down from the motorcycle and sustained grievous injuries and died on the spot. The accident had occurred due to rash and negligent driving of the rider of the Motorcycle. A criminal case was also registered against the rider of the Motorcycle and the first respondent in the claim petition is the owner of the Motorcycle and the second respondent is the insurer.

4. The learned counsel appearing on behalf of the appellant/Insurance Company mainly contended that the facts placed before the Tribunal clearly establishes that the rider of the Motorcycle was not possessing a valid driving license and in fact, he was possessing only LLR Learner's License and as per the conditions attached to the LLR Learner's License, a trained driver must be accompanied by a person, who was learning driving.

5. In the present case on hand, the pillion rider was a girl, who was not a driver and under those circumstances, the rider of the Motorcycle violated the conditions attached with the LLR Learner's License as per Rule 3 of the Central Motor Vehicle Rules in view of the fact that the rider of the Motorcycle had violated the Rules, the Insurance Company is not liable to pay compensation.

6. This Court is of the considered opinion that the pillion rider is a third person, who is a girl, sustained grievous injuries and died. On account of the mistake committed by the rider, the third party cannot made to suffer and under those circumstances, the Courts have ordered pay and recovery in order to ensure that the accident victims are suitably compensated as per the policy.

7. It is pertinent to note that when a rider of the Motorcycle commits certain breach of contract with reference to the policy conditions, then the Courts are ordering for pay and recovery to pay the compensation immediately to the accident victims and thereafter recover the same from the person, who is liable to pay compensation in accordance with law.

8. In the present case on hand, perusal of the findings of the Tribunal enumerates that the rider of the Motorcycle was possessing only LLR Learner's License and he was not accompanied by a trained rider at the time of accident. Therefore, he

violated the Rule 3 of the Central Motor Vehicle Rules and therefore, the owner of the Motorcycle is liable to pay the compensation and further more the rider of the Motorcycle committed an act of negligence, which was established before the Tribunal.

9. This being the factum as well as the principles to be followed, the Tribunal has committed an error in not ordering pay and recovery, enabling the Insurance Company to settle the compensation at the first instance, the claimants are entitled for the same from the owner of the Motorcycle. In all other respects, regarding the quantum of compensation, this Court do not find any perversity or infirmity. Thus, this Court is not inclined to interfere with the quantum of compensation arrived by the Motor Accidents Claims Tribunal.

10. Accordingly, the judgment and decree dated 28.11.2014 passed by the learned District Judge, District Court No.II-cum-Motor Accidents Claims Tribunal, Kanchipuram in MCOP No.1229 of 2010 is modified to the extent that the compensation awarded by the Tribunal is to be paid by the appellant-Insurance Company, within a period of six weeks from the date of receipt of a copy of this judgment and they are entitled to file an execution petition before the Competent Forum for the purpose of recovering the said compensation amount from the owner of the vehicle by following the procedures contemplated.

11. The learned counsel for the appellant made a submission that the entire Award amount had already been deposited and accordingly, the respondents/claimants are permitted to withdraw the entire Award amount with accrued interest at the rate of 7.5% per annum by filing an appropriate application and the payments are to be made only through RTGS.

12. Accordingly, C.M.A.No.1814 of 2015 stands allowed in part. However, there shall be no order as to costs. The connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

Svn

To

1.The District Judge,
District Court No.II-cum-Motor Accidents Claims Tribunal,
Kanchipuram.

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

+1 cc to M/s.j,Micheal Visuvasam, Advocate Sr.No. 20942

CMA No.1814 of 2015

SPD (CO)

RMP (08/01/2021)



WEB COPY