IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:29.09.2020

Coram:

THE HONOURALE DR. JUSTICE G.JAYACHANDRAN

C.M.A.No.1545 of 2016
and
C.M.P.No.11725 of 2016

Bajaj Allianz General Insurance Co.Ltd.,
No.30, FNG First East Main Road,
Gandhi Nagar,
Vellore 632 006. .. Appellant /Respondents

/versus/

P.Selvarasu .. Respondent/Claimant

Prayer: Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988 the award and decree dated 08.07.2013 made in M.C.O.P.No.10 of 2007 on the file of the Motor Accidents Claims Tribunal, Sub Court, Ranipet.

For Appellant :Mr.S.Arunkumar
For Respondent :Mr.M.Sivakumar

J U D G M E N T

(The case has been heard through Video conference)

Aggrieved by the award passed by the tribunal in M.C.O.P.No.10 of 2007, this appeal is filed by the Insurance Company.

2.This appeal is arising out of the accident, which occurred on 11.09.2006, when the claimant along with one Siva @ Sivakumar on the pillion was travelling in his Hero Honda Splander bearing Reg.No.TN 25 V 7429, an unknown heavy vehicle came in the opposite direction from Arni and dashed against the two wheeler causing the death of pillion rider and grievous injury to the rider of the two wheeler. The injured rider preferred a claim petition in M.C.O.P.No.10 of 2007 and the legal heirs of the deceased pillion rider preferred a claim petition in M.C.O.P.No.220 of 2006 on the file of the Motor Accident Claims Tribunal, Sub Court, Ranipet under Section 166 of the Motor Vehicles Act, 1988.

3.The Insurance Company filed separate counters in the claim petitions. In the petition filed by the rider of the two wheeler Selvarasu, they contended that the rider of the two wheeler was holding only LLR and he had no valid driving license at the time of accident. Further, the insurance for motor cycle bearing Reg.No.TN 25 V 7420 which was driven by the insured Selvarasu covers only (i) third party cover and (ii) personal accident cover for owner-cum-driver. The rider of the two wheeler is not covered under insurance, since he had no valid driving license.

4.The Tribunal, after considering the oral and documentary evidence, fixed compensation of Rs.81,500/-. Out of which, the petitioner is entitled to receive 60% i.e Rs.48,900/- with interest at the rate of 7.5% p.a along with costs.

5.The claimant is the rider of the two wheeler, who met with an accident during the collusion with an unknown vehicle. The petitioner filed a claim petition under Section 166 of the Motor Vehicles Act, 1988 seeking Rs.1,00,000/- as compensation. The petition was opposed by the Insurance Company on the ground that the claimant is the dirver-cum-owner of the vehicle and the Insurance coverage is limited to the third parties. Further, if at all any compensation to be paid only the offending vehicle owner or its insurer has to pay.

6.In this case, the offending vehicle is an unknown heavy vehicle, which has hit and run the same. Under Section 147(1)(a) of the Motor Vehicles Act, there is no statutory liability to pay the rider-cum-owner of the vehicle. Further, the personal accident cover given to the vehicle will not enure any advantage to the claimant, since he did not have a valid driving license and he did not sustain any total permanent disability. Hence, both under statute as well as under the contract, the Insurance Company is not liable to pay compensation to the claimant who is the rider-cum-owner of the vehicle. The Trbunal despite the above counter, after reducing 40% for the violation out of Rs.81,500/- has awarded Rs.48,900/- as compensation. Hence, this appeal in C.M.A.No.1545 of 2016 has been filed stating that the award passed by the tribunal is contrary to Section 147 of the Motor Vehicles Act, 1988 as well as contrary to the Judgments reported in The Oriental Insurance Co.Ltd., v. Premlata Shukla and Others [2007AIR SCW 3591] and National Insurance Company ltd. v. Rattani [2009 ACJ 925(SC)].

7.On considering the submissions made by the learned counsel appearing for the appellant and the learned counsel appearing for the respondent, this Court finds that the Insurance Company has collected Rs.50/- towards compulsory personal accident cover for Rs.1,00,000/-. However, to get that compensation under the said PA cover, the rider ought to have sustained injury resulting in total permanent disability as per the terms of the contract. Mere payment of premium towards personal accident (PA) cover, will not ipso facto entitle to the rider to get compensation. It is subjected to the nature of the injury.

8.In this case, the claimant Selvarasu had sustained grievous injuries on his face and lost his teeth in the accident. The Doctor has assessed the disability as partial permanent one at 30%. The injury referred above does not cover under the policy which specifically mentions that the coverage is for loss of limb and loss of eye leading to total permenant disabilty.

9.On considering the privisons of law and the judgments of the Hon'ble Supreme Court relied, this Court is of the opinion that the personal accident cover for the driver/owner does not cover the injuries sustained by the claimant. Hence, the award of compensation to the claimant under personal accident (PA) cover is erroneous. Therefore, the Civil Miscellaneous Appeal has to be allowed.

10. In the result, this Civil Miscellaneous Appeal is allowed. The award passed by the Tribunal in M.C.O.P.No.10 of 2007dated 08.07.2013 is set aside. No order as to costs.

11.The learned counsel appearing for the Insurance Company states that pursuant to the direction of this Court, the award amount has been deposited in to the M.C.O.P.account.

12.In such circumstances, the Insurance Company/appellant is permitted to withdraw the said amount on filing appropriate petition. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

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To
The Motor Accident Claims Tribunal,
Subordinate Court, Ranipet.

+1cc to Mr.S.Arunkumar, Advocate, S.R.No. 32373

C.M.A.No.1545 of 2016
and
C.M.P.No.11725 of 2016

RSV(CO)
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