IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.09.2020

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.1886 of 2014
and M.P.No.1 of 2014

M/s.Bajaj Allianz General Insurance Co. Ltd.,
Rep. by its Branch Manager,
The Branch Office,
No.11, (Office No.5-A),
People's Park, 3rd Floor,
Government Arts College Road,
Coimbatore. ...Appellant/2nd Respondent

vs.

1.Mr.Thimmaiya ...1st Respondent/Petitioner
2.Mr.V.Srinivasan
..2nd Respondent/1st Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree in M.C.O.P.No.37 of 2007, dated 04.01.2013 on the file of Motor Accident Claims Tribunal, Principal Subordinate Court, Krishnagiri.

For Appellant : Mr.E.Rajadurai
for M/s.N.Vijayaraghavan

For Respondents: Mr.M.Sivakumar for R1
R2 - left

JUDGMENT

(This case was heard through Video Conferencing)

This appeal has been filed by the Appellant Insurance Company challenging the Award dated 04.01.2013 passed by the Motor Accident Claims Tribunal, Principal Subordinate Judge, Krishnagiri in M.C.O.P.No.37 of 2007.

2.Heard Mr.E.Rajadurai, learned counsel for the Appellant and Mr.M.Sivakumar, learned counsel for the first respondent.

3.The Motor Accident Claims Tribunal under the impugned Award has directed the Appellant Insurance Company to pay the first respondent a compensation of Rs.4,01,400/- together with interest and cost and recover the same from the second respondent/owner of the vehicle (insured).

4.The details of the compensation awarded by the Tribunal under the impugned Award are as follows:

Future Loss of earning (4500x12x11x60/100)	-	Rs.3,56,400/-
Pain and suffering	-	Rs.20,000/-
Extra nourishment & attender	-	Rs.15,000/-
Future treatment	-	Rs.10,000/-
Total		Rs.4,01,400/-

5.The only ground raised by the Appellant Insurance Company is that they are not liable to compensate the claimant since the injured claimant namely the first respondent herein was a gratuitous passenger in a goods vehicle which was insured with the Appellant. According to the Appellant, despite the fact that the first respondent/claimant has himself pleaded in the claim petition filed before the Tribunal in M.C.O.P.No.34 of 2007 that he was travelling in the goods vehicle to his native place and the Tribunal having categorically observed in the impugned Award that 11 persons were travelling in the goods vehicle, has erroneously passed the Award directing the Appellant Insurance Company to pay the compensation amount and recover the same from the owner of the vehicle (insured) since the driver of the vehicle was not possessing a valid driving license at the time of the accident.

6.Before the Tribunal, the first respondent/claimant has filed 8 documents which were marked as Exs.A1 to A8 and two witnesses were examined on his side namely, the first respondent/claimant himself as PW1 and the Doctor who examined him as PW2. On the side of the Appellant Insurance Company, 4 documents were filed namely Exs.B1 to B4 and 2 witnesses were examined namely, RW1 and RW2.

7.The learned counsel for the respondents vehemently opposed the contention of the Appellant and submitted that the Tribunal has rightly awarded pay and recovery rights.

8.This Court after perusing the pleadings, materials and evidence available on record has to necessarily accept the contention of the Appellant Insurance Company for the following reasons:

(a)In the claim petition, the first respondent/claimant has categorically pleaded that on 28.04.2000, he was travelling in the Bajaj Mini door pickup van bearing Registration No.TN 24 Y 5238 (insured with the Appellant) and was proceeding from Shoolagiri to his native.

(b)The Tribunal under the impugned Award in paragraph No.12 has categorically observed that the insured vehicle at the time of the accident was carrying 11 persons including the first respondent/claimant, whereas the said vehicle is permitted to carry only 3 persons namely, the driver, cleaner and one more authorized person. No evidence whatsoever has been placed by the first respondent/claimant before the Tribunal to establish that he was an authorized person as prescribed under Section 147 (1)(b)(i) of the Motor Vehicles Act. However, the Tribunal has erroneously granted pay and recovery rights only on the basis that the driver of the insured vehicle was not possessing a driving license at the time of the accident.

9.An unauthorised passenger/ gratuitous passenger and non-possession of driving license are two different issues. Unless and until, the first respondent/claimant establishes before the Tribunal that he was an authorized representative as prescribed under Section 147(1)(b)(i) of the Motor Vehicles Act, the Tribunal cannot direct the Insurance Company to pay the compensation amount and recover the same from the owner (insured). Non-possession of driving license is a different issue altogether which will have no impact to the instant case since the first condition for claiming the compensation i.e. the first respondent/claimant was an authorized representative has not been satisfied.

10.Since the first respondent/claimant has not satisfied Section 147(1)(b)(i) of the Motor Vehicles Act, the Appellant Insurance Company is not liable to pay the compensation. Therefore, the pay and recovery rights granted by the Tribunal is erroneous and it has to be set aside by this Court. Accordingly, the impugned Award passed against the Appellant is set aside by this Court. However, the Award passed against the second respondent under the impugned Award is confirmed by this Court.

11.In the result, the impugned Award dated 04.01.2013 passed against the Appellant Insurance Company in M.C.O.P.No.37 of 2007 by the Motor Accident Claims Tribunal, Principal Subordinate Judge, Krishnagiri is set aside by this Court and the Appeal is allowed. It is submitted by the learned counsel for the Appellant that a portion of the Award amount has already been deposited by the Appellant to the credit of M.C.O.P.No.37 of 2007 subsequent to the filing of this appeal. Since the Appeal is allowed, the Appellant is permitted to withdraw whatever the amount deposited by them to the credit of M.C.O.P.No.37 of 2007 by filing an appropriate application before the Tribunal.

12.The second respondent is directed to deposit the amount awarded by the Tribunal together with interest at the rate of 6% p.a. per annum from the date of claim till the date of realisation to the credit of M.C.O.P.No.37 of 2007, on the file of the Motor Accident Claims Tribunal, Principal Subordinate Judge, Krishnagiri, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal is directed to transfer the award amount along with accrued interest lying to the credit of M.C.O.P.No.37 of 2007 to the bank account of the first respondent/claimant, through RTGS, within a period of two weeks thereafter. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

pam
To
1.The Motor Accident Claims Tribunal,
Principal Subordinate Judge, Krishnagiri.

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

+1cc to Mr.C.Prabakaran, Advocate, sr no.30712

C.M.A.No.1886 of 2014

SJ(CO)
RMP(21/04/2021)