

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.08.2020

CORAM

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.948 of 2014

Bajaj Alliance General Insurance Co. Ltd.,
No.11, (office No.6-A)
People's Park 3rd Floor,
Government College Road
Coimbatore-641 018.

.. Appellant

..Vs..

1. M.Ramkumar
2. S.Karthikeyan
3. V.Suresh
4. Iffco-Tokyo General Insurance Co. Ltd.,
JH Tower, 2nd Floor,
New No.24, Old No.302,
LIC colony Road,
Salem.

(2nd & 3rd respondents are set
ex-parte in lower Court)

..Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and decree dated 06.07.2013 made in M.C.O.P.No.1288 of 2009 on the file of the Motor Accident Claims Tribunal, (Additional District Judge-III) Dharapuram.

For Appellant : Mrs.R.Sree Vidhya

For Respondents: Mr.J.Michael viswasam - R4

No appearance - served - R1

Not ready in notice reg. R2 and R3

J U D G M E N T

This appeal has been filed by the insurance company challenging the award dated 06.07.2013 passed by the Motor Accident Claims Tribunal, (III Additional District Judge), Dharapuram in MCOP. No.1288 of 2009.

2. The only ground raised by the appellant/insurance company is that the Tribunal ought to have granted pay and recovery rights to the appellant/insurance company, since the

driver of the insured vehicle was not possessing a valid driving license at the time of the accident.

3. The first respondent/claimant sustained injuries on 04.10.2009 as a result of an accident caused by a two wheeler viz., Hero Honda bearing Registration No.TN 36 H 3213 insured with the appellant/insurance company.

4. The Motor Accidents Claims Tribunal, under the impugned award, has directed the Appellant as well as the second respondent jointly and severally to pay the compensation of Rs.1,17,000/- together with interest and costs to the injured claimant/first respondent for the injuries sustained by him, as detailed hereunder:

Head	Award passed by the Tribunal (Rs.)
Permanent disability	28,000/-
Loss of income (Rs.5,000/-X 5 months)	25,000/-
Transportation	5,000/-
Extra nourishment	5,000/-
Pain and suffering	20,000/-
Medical expenses	28,500/-
Future Medical exp.	5,000/-
Damage to clothes	500/-
Total	1,17,000/-

5. Aggrieved by the award dated 06.07.2013, this appeal has been filed by the insurance company.

6. Heard Mrs.R.Sree Vidhya, learned counsel for the Appellant/Insurance Company and Mr.J.Viswasam, learned counsel for the 4th respondent. There is no representation for the first respondent/claimant.

7. Before the Tribunal, the claimant/first respondent has filed fourteen documents, which were marked as Ex.P1 to Ex.P14 and two witnesses were examined on his side viz., the first respondent/injured claimant himself as PW1, Dr.Periyasamy - Doctor, who examined the claimant as PW2. On the side of the appellant/insurance company, four documents were filed, which were marked as Ex.R1 to Ex.R4 and two witnesses were examined viz., Mr.M.Sampath, RTO Official as RW1 and Mrs.Vishwa dhaarani, Insurance company official as RW2, before the Tribunal.

8. As seen from the evidence available on record, the appellant/insurance company has called upon the driver of the insured vehicle through Ex.R3 notice to produce a copy of his driving license. The said notice has also been duly acknowledged by the said driver and the acknowledgment card has been marked as Ex.R4. The RTO official, RW1 has deposed that the driver of the vehicle, who caused the accident, did not possess a driving license. This being the case, the Tribunal ought to have granted pay and recovery rights to the appellant/insurance company. By total non application of mind and by not appreciating the evidence available on record, the Tribunal has erroneously not granted the said right to the appellant/insurance company.

9. Insofar as, the quantum of compensation is concerned, the appellant/insurance company has not aggrieved over the same and has challenged this appeal only with regard to non grant of pay and recovery rights in their favour by the Tribunal.

10. As observed earlier, the appellant/insurance company is legally entitled for pay and recovery rights, in view of the non possession of a valid driving license by the driver of the insured vehicle at the time of the accident.

11. The FIR (Ex.P1) has been registered only against the driver of the vehicle, insured with the appellant/insurance company. There is no contra evidence produced by the appellant/insurance company to disprove the contention of the claimant that only due to the rash and negligent driving by the driver of the vehicle insured with the appellant, the accident had happened.

12. In the case on hand, the preponderance of probability will conclusively establish that the driver of the vehicle insured with the appellant/insurance company is alone responsible for the cause of the accident. Therefore, the negligence issue raised by the appellant in this appeal is rejected by this Court.

13. For the foregoing reasons, the impugned judgment and decree insofar as the finding given by the Tribunal that the appellant/insurance company is not entitled for pay and recovery rights is alone set aside and accordingly, this appeal is partly allowed by granting pay and recovery rights to the Appellant/insurance company. However, the rate of interest fixed by the Tribunal at the rate of 7.5% is confirmed. The appellant/insurance Company is directed to deposit the compensation amount as assessed by the Tribunal, along with interest and costs, after deducting the amount, if any, already deposited, to the credit of MCOP.No.1288 of 2009 within a period of four weeks

from the date of receipt of a copy of this Judgment and recover the same from the second respondent who is the owner of the vehicle insured with the Appellant in accordance with law.

14. On such deposit being made, the Tribunal is directed to transfer the award amount along with accrued interest to the bank account of the first respondent/claimant through RTGS within a period of two weeks thereafter. No costs.

Sd/-
Assistant Registrar (CS-V)

//True copy//

Sub Assistant Registrar

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To

1. The Motor Accident Claims Tribunal,
III Additional District Judge,
Dharapuram.

2. The Section Officer,
V.R. Section, High Court,
Madras.

+1cc to Mr.J.Michael viswasam, Advocate SR.No.27242

C.M.A.No.948 of 2014

GMV (08/09/2020)

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