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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.02.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A. No.4616 of 2019
and C.M.P.No.26170 of 2019

Bajaj Allianz General Insurance Co. Ltd.,
GE Plaza, Airport Road,
Yerwada, Pune 411 006.

.. Appellant/2nd Respondent

Vs.

1.M.Vijayan

...1st Respondent/Petitioner

2.C.Muniappa

.. Respondents/1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 27.06.2019, made in M.C.O.P. No.1271 of 2010, on the file of the Chief Judicial Magistrate Court, (Motor Accident Claims Tribunal), Krishnagiri.

For Appellant : Mr.S.Arunkumar

For Respondents: No appearance

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant-Insurance Company to set aside the judgment and decree dated 27.06.2019, made in M.C.O.P. No.1271 of 2010, on the file of the Chief Judicial Magistrate Court, (Motor Accident Claims Tribunal), Krishnagiri.

2.The appellant is the 2nd respondent in M.C.O.P. No.1271 of 2010, on the file of the Chief Judicial Magistrate Court, (Motor Accident Claims Tribunal), Krishnagiri. The 1st respondent/claimant filed the said claim petition, claiming a sum of Rs.10,00,000/- as compensation for the injuries sustained by him in the accident that took place on 26.01.2008.

3.According to the 1st respondent, on the date of accident, when he was riding the Bajaj Boxer Motorcycle bearing Registration No.TN-29-L-5880 from Hosur towards Krishnagiri slowly, cautiously, observing the traffic rules and sounding



horn, near the 'U' turn at Gandhi Nagar, a rider of the Bajaj Discover Motorcycle bearing Registration No.TN-24-V-1441 belonging to the 2nd respondent drove the same in a rash, reckless and negligent manner at an uncontrollable speed, without minding the traffic rules and without sounding horn, dashed on the Bajaj Boxer Motorcycle rode by the 1st respondent and caused the accident. In the accident, the 1st respondent sustained fracture on his right leg and multiple injuries all over his body. The accident occurred only due to rash and negligent riding by the rider of the Bajaj Discover Motorcycle belonging to the 2nd respondent. Hence, the 1st respondent filed the claim petition claiming compensation against the 2nd respondent as owner and appellant as insurer of the said vehicle.

4.The 2nd respondent, owner of the Bajaj Discover Motorcycle, remained exparte before the Tribunal.

5.The appellant-Insurance Company, filed counter statement and denied all the averments made by the 1st respondent in the claim petition. According to the appellant, the accident occurred only when the 1st respondent rode the Bajaj Boxer Motorcycle in a rash and negligent manner, suddenly crossed the road and hit against the Bajaj Discover Motorcycle belonging to the 2nd respondent. The rider of the Bajaj Discover Motorcycle belonging to the 2nd respondent, did not possess valid driving license to ply the vehicle at the time of accident, the vehicle did not have valid permit and thus, violated the policy conditions. For violation of policy conditions, the appellant is not liable to indemnify the 2nd respondent. The 2nd respondent did not produce the particulars of policy, date, time and place of accident to the appellant. In any event, the 1st respondent has to prove his age, avocation and income, manner of accident, injuries sustained and treatment taken, to claim compensation and prayed for dismissal of the claim petition.

6.Before the Tribunal, the 1st respondent examined himself as P.W.1, examined Doctor as P.W.2 and marked 14 documents as Exs.P1 to P14. The appellant examined the Record Clerk of Regional Transport Office, Hosur as R.W.1, official of the appellant as R.W.2 and marked 5 documents as Exs.R1 to R5.

7.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent riding by rider of the Bajaj Discover Motorcycle belonging to the 2nd respondent and directed the appellant as insurer of the said vehicle to pay a sum of Rs.6,00,908/- as compensation to the 1st respondent.



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their contention, the appellant examined Record Clerk from the concerned Regional Transport Office who deposed that from their records, it is seen that no driving license was issued to the rider of the Motorcycle. In addition to examining R.W.1, the appellant also filed and marked Ex.R1- notice sent to the 2nd respondent to produce driving license, Ex.R2 - acknowledgement card for receiving the same, Ex.R3 - Motor Vehicle Inspector's report, Ex.R4 - policy copy and Ex.R5 - Registered postal acknowledgement card. From the documents marked by the appellant, it is seen that rider of the Bajaj Discover Motorcycle did not produce the driving license before the Motor Vehicle Inspector at the time of inspection. The 2nd respondent, owner and rider of the Bajaj Discover Motorcycle did not produce the driving license even after receiving the notice sent by the appellant. The Tribunal failed to appreciate the evidence of R.W.1 and documents filed by the appellant in proper perspective. The Tribunal erroneously relied on the cross-examination of R.W.1 that rider of the Bajaj Discover Motorcycle can obtain driving license anywhere in India. The Tribunal ought to have considered the evidence of R.W.1 along with Exs.R1 to R5, to come to the conclusion with regard to the driving license of the rider of the Bajaj Discover Motorcycle at the time of accident. Considering the evidence of R.W.1 and Exs.R1 to R5, it is clear that the rider of the Bajaj Discover Motorcycle did not possess driving license at the time of accident. The Tribunal erroneously fastened the liability on the appellant. By examining R.W.1 and marking the documents viz., Exs.R1 to R5, the appellant proved that the rider of the Motorcycle did not possess driving license. The liability of the insurer when the rider of the offending vehicle did not possess driving license was considered by the Hon'ble Apex Court in the judgment reported in AIR 2020 SCC 4453 [Beli Ram Vs. Rajender Kumar and another], wherein it has been held as follows:

"21. The learned Judge debated the question of the consequences of the MV Act being a beneficial piece of legislation. Thus, if two interpretations were possible, it was opined that the one which is in favour of the claimants should be given, but violence should not be done to the clear and plain language of the statute. Thus, while protecting the rights of the claimants by asking the insurance company to deposit the amount, the recovery of the same from the insured would follow as the sympathy can only be for the victim of the accident. The right which has to be protected, is of the victim and not the owner of the vehicle. It was, thus, observed in para 18 as under:

"18 When an employer employees a driver, it is his duty to check that the driver is duly licensed to drive the



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vehicle. Section- 5 of the Motor Vehicles Act provides that no owner or person incharge of a motor vehicle shall cause or permit any person to drive the vehicle if he does not fulfil the requirements of Sections 3 and 4 of the Motor Vehicles Act. The owner must show that he has verified the licence. He must also take reasonable care to see that his employee gets his licence renewed within time. In my opinion, it is no defence for the owner to plead that he forgot that the driving licence of his employee had to be renewed. A person when he hands his motor vehicle to a driver owes some responsibility to society at large. Lives of innocent people are put to risk in case the vehicle is handed over to a person not duly licensed. Therefore, there must be some evidence to show that the owner had either checked the driving licence or had given instructions to his driver to get his driving licence renewed on expiry thereof. In the present case, no such evidence has been led. In view of the above discussion, I am clearly of the view that there was a breach of the terms of the policy and the Insurance Company could not have been held liable to satisfy the claim.

23. When we turn to the facts of the present case there is almost an identical situation where the appellant has permitted to let the first respondent driver drive the truck with an expired licence for almost three (3) years. It is clearly a case of lack of reasonable care to see that the employee gets his licence renewed, further, if the original licence is verified, certainly the employer would know when the licence expires. And here it was a commercial vehicle being a truck. The appellant has to, thus, bear responsibility and consequent liability of permitting the driver to drive with an expired licence over a period of three (3) years. The only thing we note is that fortunately there has been no accident with a third party claimant but the person who has caused the sufferance and sufferer are one and the same person, i.e., the first respondent



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driver. We are, however, dealing with the determination under the Compensation Act and those provisions are for the benefit of the workmen like the first respondent, even though he may be at fault, by determining a small amount payable to provide succor at the relevant stage when the larger issues could be debated in other proceedings.

The only exception is in the provisos to Section 3 of the Compensation Act, which is not the factual situation in the present case. The relevant provision reads as under:

"3. Employer' s liability for compensation.-

(1) If personal injury is caused to a workman by accident arising out of and in the course of his employment, his employer shall be liable to pay compensation in accordance with the provisions of this Chapter:

Provided that the employer shall not be so liable--

(a) in respect of any injury which does not result in the total or partial disablement of the workman for a period exceeding [four] days;

(b) in respect of any [injury, not resulting in death, caused by] an accident which is directly attributable to--

(i) the workman having been at the time thereof under the influence of drink or drugs, or

(ii) the wilful disobedience of the workman to an order expressly given, or to a rule expressly framed, for the purpose of securing the safety of workmen, or

(iii) the wilful removal or disregard by the workman of any safety guard or other device which he knew to have been provided for the purpose of securing the safety of workmen."

We are not aware whether any other proceedings have been initiated or not, at



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least, none that have been brought to our notice. The aforesaid findings of the initial lack of care by the first respondent in not renewing the driving licence would be present, but the lack of care of the appellant as the employer would also arise. We have penned down the aforesaid views as such a situation is quite likely to arise in proceedings under the MV Act where a third party is claiming the amount. Proceedings here being under the Compensation Act, the consequences are not flowing to the first respondent as the initial negligent person."

The ratio in the said judgment of the Hon'ble Apex Court referred to above is squarely applicable to the facts of the present case. In view of the same, the appellant-Insurance Company is not liable to pay compensation to the 1st respondent and the 1st respondent is entitled to receive compensation awarded by the Tribunal only from the 2nd respondent, owner of the offending vehicle.

13. For the above reason, this Civil Miscellaneous Appeal is allowed and amount awarded by the Tribunal at Rs.6,00,908/- together with interest at the rate of 8% per annum from the date of petition till the date of deposit is confirmed. The 2nd respondent is directed to deposit the award amount, along with interest and costs, within a period of six weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P. No.1271 of 2010. On such deposit, the 1st respondent is permitted to withdraw the award amount, along with interest and costs, after adjusting the amount, if any, already withdrawn, by filing necessary applications before the Tribunal. The appellant-Insurance Company is permitted to withdraw the award amount, lying in the deposit to the credit of M.C.O.P. No.1271 of 2010, if any already deposited by them. It is made clear that if the 1st respondent has already withdrawn the award amount, the appellant-Insurance Company is not entitled to recover the same from the 1st respondent. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-

Assistant Registrar(CO)

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Sub Assistant Registrar



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To

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1.The Chief Judicial Magistrate,
(Motor Accident Claims Tribunal),
Krishnagiri.

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

+1cc to Mr.S.Arun Kumar, Advocate, S.R.No.11668

C.M.A. No.4616 of 2019

CA(CO)
CB(22/09/2021)