



WEB COPY



C.M.A. No.1541 of 2009

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.07.2024

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A. No.1541 of 2009

Bajaj Allianz General Insurance Co. Ltd.,
Prince Towers,
No.25/26, College Road,
Nungambakkam,
Chennai - 600 006.

.. Appellant

vs.

1.N.Mani

2.D.Palayam

.. Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against and judgment and decree dated 26.08.2008 made in M.C.O.P. No.5622 of 2004 on the file of the Motor Accidents Claims Tribunal, II Court of Small Causes, Chennai.

For Appellant : Ms.R.Sree Vidhya

For R1 : No appearance

For R2 : Exparte



C.M.A. No.1541 of 2009

WEB COPY

JUDGMENT

This appeal has been filed by the appellant/Insurance Company, primarily questioning the non-grant of pay and recovery rights to them under the impugned award.

2.Even though grounds have been raised in this appeal, questioning the quantum of compensation awarded by the Tribunal, the learned counsel for the appellant/Insurance Company would now restrict her arguments only to the non-grant of pay and recovery rights by the Tribunal.

3.According to the appellant/Insurance Company, since the rider of the motor cycle, who is responsible for the cause of the accident, was not possessing a driving licence, the Tribunal ought to have granted pay and recovery rights to the appellant/Insurance Company.

4.Learned counsel for the appellant/Insurance Company drew the attention of this Court to the exhibits marked on the side of the appellant/



C.M.A. No.1541 of 2009

Insurance Company before the Tribunal and would submit that as seen from the Investigation Final Report, marked as Ex.R3 as well as the returned cover, marked as Ex.R4 and copy of the Advocate Notice, marked as Ex.R5, it is clear that the rider of the motor cycle, responsible for the cause of the accident, was not possessing a driving licence at the time of the accident. Therefore, according to her, the Tribunal has committed an error in not granting pay and recovery rights to the appellant/Insurance Company.

5.The first respondent, who is the claimant, is represented by a learned counsel. The second respondent, who is the owner of the two wheeler, had chosen to remain exparte before the Tribunal. In this appeal as well, since notice could not be served on him, this Court had directed the appellant/Insurance Company to effect substituted service on the second respondent and despite effecting substituted service, he has not entered appearance. Therefore, the second respondent is set exparte by this Court.

6.As seen from the exhibits marked on the side of the appellant/



C.M.A. No.1541 of 2009

Insurance Company before the Tribunal, referred to supra, it is clear that the rider of the motor cycle, responsible for the cause of the accident, was not possessing driving licence at the time of the accident. Despite notice having been sent by the appellant/Insurance Company, which has been marked as Ex.R5, the second respondent, who is the owner of the motor cycle, did not produce driving licence for the rider of the motor cycle, who is responsible for the cause of the accident. The Advocate notice, marked as Ex.R5 was sent by the appellant/Insurance Company only to the address disclosed in the claim petition by the first respondent/claimant and the said notice has been returned un-served and the returned cover has been marked as Ex.R4 before the Tribunal. The Investigation Final Report (Ex.R3) reveals that the second respondent did not produce driving licence of the rider of the motor cycle, who is responsible for the cause of the accident.

7.Despite the evidence available on record would go to show that the rider of the motor cycle, responsible for the cause of the accident, did not possess a valid driving licence at the time of the accident, the Tribunal has ignored the same and by total non-application of mind to



C.M.A. No.1541 of 2009

the said fact has not granted pay and recovery rights to the appellant/Insurance Company under the impugned award. The finding rendered by the Tribunal that the appellant/Insurance Company is not entitled for the grant of pay and recovery rights is a perverse finding and necessarily, the same has to be set aside by this Court and pay and recovery rights will have to be granted to the appellant/Insurance Company.

8.For the foregoing reasons, the impugned award is modified by granting pay and recovery rights to the appellant/Insurance Company by directing them to pay the compensation amount as determined by the Tribunal and on payment of the same, permitting them to recover the same from the second respondent as per the procedure established under law.

9.In the result, the impugned award is modified and this appeal is partly allowed by issuing the following directions:

a)Pay and recovery rights is granted to the appellant/Insurance Company;

b)The appellant/Insurance Company is directed to deposit the



C.M.A. No.1541 of 2009

award amount as determined by the Tribunal under the impugned award, after deducting the amount already deposited, if any, together with interest at the rate of 7.5% per annum from the date of the claim petition till the date of deposit to the credit of M.C.O.P. No.5622 of 2004 on the file of the Motor Accidents Claims Tribunal, II Court of Small Causes, Chennai, within a period of four weeks from the date of receipt of a copy of this judgment;

c)On deposit of the said amount, the first respondent/claimant is permitted to withdraw the said amount by filing an appropriate application before the Tribunal;

d)On such an application being made, the Tribunal shall transfer the amount lying to the credit of M.C.O.P. No.5622 of 2004 on the file of the Motor Accidents Claims Tribunal, II Court of Small Causes, Chennai to the bank account of the first respondent/claimant directly through RTGS, within a period of one week thereafter;

e)The appellant/Insurance Company, on deposit of the said amount, is permitted to recover the same from the second respondent as per the procedure established under law. No costs.



C.M.A. No.1541 of 2009

30.07.2024

To

- 1.The Motor Accidents Claims Tribunal,
II Court of Small Causes, Chennai.
- 2.The Section Officer,
V.R. Section, High Court, Madras.



WEB COPY



C.M.A. No.1541 of 2009

ABDUL QUDDHOSE, J.

vga

C.M.A. No.1541 of 2009

30.07.2024