(2013) 07 MAD CK 0201

In the Madras High Court

Case No : C.M.A. No. 2273 of 2013 and M.P. No''s. 1 and 1 of 2013

Bajaj Allianz General Insurance Co. Ltd. APPELLANT

Vs

Shanmugam and T.S. Ramesh RESPONDENT

Date of Decision : 24-07-2013

Acts Referred:

Citation : (2013) 07 MAD CK 0201

Hon'ble Judges : G.M. Akbar Ali, J

Bench : Single Bench

Advocate : S. Arun Kumar, for the Appellant; F. Terry Chellaraja for Ms. M. Malar, for the Respondent

Judgement

G.M. Akbar Ali, J.—The Insurance Company is the appellant in the appellant in both the appeals, questioning the liability and therefore, the

factum of accident and quantum are not discussed. The injured/Claimants filed claim petitions claiming compensation for the injuries suffered by

them and they have been awarded a sum of Rs. 1,55,800/- and Rs. 2,05,000/- respectively. Though the Insurance Company took a specific plea

that the driver of the insured vehicle involved in the accident did not possess a valid licence and they have examined witnesses to that effect, the

same is not reflected in the judgment and hence, the Insurance Company is before this Court.

2. Mr. S. Arun Kumar, learned counsel appearing for the Insurance Company pointed out that the Insurance Company has examined witnesses

and has called for records from the Regional Transport Office to prove that the driver of the insured vehicle did not possess a valid licence. The

learned counsel pointed out that there is no discussion in respect of examination of such witnesses in the award. The learned counsel for the appellant also produced copies of the evidence.

3. On the other hand, Mr. F. Terry Chellaraja, learned counsel appearing for the respondent No. 1/claimants in both appeals, would submit that

during the course of trial, owner of the vehicle died and he was set ex-parte. Learned counsel pointed out that even assuming that the driver was

not in possession of the valid license, it is only a breach of policy condition u/s 149(2)(a)(b) of the Act and the Insurance Company is liable to pay

compensation.

4. I have heard the learned counsel appearing for the appellant and the learned counsel for the respondents/claimants and perused the materials

available on record.

5. The main stand taken by the Insurance Company is that the driver was not in possession of valid driving license. It is well settled that it amounts

to breach of policy condition. Even in case of ''no license'', insurer is to be exonerated, but as per Section 149(4) and (5), Insurer can be directed

to pay and recover.

6. This Court in Branch Manager, Branch Manager, Oriental Insurance Company Ltd. Vs. Mansoor Hussain and Another, has held that the

Insurer, having established non-possession of license though exonerated from its liability, directed to pay and recover the same from the owner in

the same proceedings. On a perusal of the record would show that the Tribunal after examining the witnesses and analyzing the documents has

awarded a just and reasonable compensation and therefore, I do not find any infirmity in the award passed by the Tribunal. Since the Insurance

Company has established no license to the driver, the appellant is exonerated but directed to pay the compensation and recover the same from the

owner of the vehicle in the same proceedings. The Insurance Company has already paid a sum of Rs. 25,000/- each in both claim petitions. The

balance is directed to be deposited, within a period of six weeks from the date of receipt of a copy of this order. On such deposit, the claimants

are permitted to withdraw their shares.

In the result, the Civil Miscellaneous Appeals are partly allowed. Connected miscellaneous petitions are closed. No costs.

