

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 29.10.2015

CORAM

THE HONOURABLE MR. JUSTICE B.RAJENDRAN

C.M.A. NO.1483 AND 1220 OF 2011 AND
M.P.NO.1 OF 2011 & M.P.NO.1 OF 2015

C.M.A. NO.1483 OF 2011

Bajaj Alliance General Insurance Co.Ltd.,
4th Floor, Prince Towers,
No.25-26, College Road,
Nungambakkam, Chennai - 600 006. ..

Appellant/2nd Respondent

Versus

1.Panchalai
2.Jayalakshmi
3.Elumalai
4.A.Muthuraman ..

Respondents/Petitioners/1st
Respondent

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree in M.C.O.P.No.48 of 2007 dated 30.11.2009 on the file of the Motor Accidents Claims Tribunal [District Court], Thiruvannamalai.

For Appellant : M/s.R.Sreevidhya
For Respondents-1 to 3 : M/s.F.Terry Chellaraja
For Respondent-4 : Ex-parte

C.M.A. NO.1220 OF 2011

1.Panchalai
2.Jayalakshmi
3.Elumalai ..

Appellants/Petitioners

Versus

1.A.Muthuraman
2.Bajaj Alliance General Insurance Co.Ltd.,
No.25-26, Prince Towers,
4th Floor, College Road,
Nungambakkam, Chennai - 600 006. ...

Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree in M.C.O.P.No.48 of 2007 dated 30.11.2009 on the file of the Motor Accidents Claims Tribunal [District Court], Thiruvannamalai.

For Appellants : M/s.F.Terry Chellaraja
For Respondent-1 : Ex-parte
For Respondent-2 : M/s.R.Sreevidhya

C O M M O N J U D G M E N T

Both these Civil Miscellaneous Appeals arise out of one and the same accident and hence they are disposed of by this common judgment. For the sake of convenience, the facts which lead to the filing of the claim petitions are stated thus;-

"[i] It is the case of the claimants that on 30.07.2006, at about 3.15p.m., one Kasi was riding his bicycle and proceeding at Tiruvannamalai - Vellore Salai, on the left side of the road, a car bearing Registration No.PY-01-W-3457 driven by its driver in the opposite direction in a very great speed and negligent manner dashed against the bicycle. In the impact of the accident, Kasi was thrown away. The injured was taken to Government Hospital, Polur and then referred to the Government Hospital, Vellore for better treatment, but he passed away on the way to Hospital.

[ii] Thus, claiming compensation for the death of Kasi, his wife, daughter and son-in-law have filed O.P.No.48 of 2007, claiming a compensation of a sum of Rs.10,00,000/- for the death of Kasi in the accident. The same was disposed of by the Tribunal by a judgment dated 30.11.2009 has awarded a sum of Rs.2,22,200/- . Challenging the said award, the claimants had filed C.M.A.No.1220 of 2011 seeking enhancement of the compensation and the Insurance Company has filed C.M.A.No.1483 of 2011."

2.The learned counsel for the Insurance Company would submit that the first claimant is not entitled to claim the compensation on the ground that she separated from the deceased 23 years back and thereafter, she has married another person and living with him along with three children. After the death of Kasi, she has obtained legal heir certificate wrongly from the authorities dated 23.02.2007.

3.The learned counsel for the claimants would submit that the first claimant has produced the legal heir certificate marked as Ex.P.6, which is issued by the Revenue Department wherein it is shown as the wife of the deceased. However, no material has been placed to show that any action has been initiated to cancel Ex.P.6. Being the legal heirs of the deceased Kasi, the claimants filed C.M.A.No.1220 of 2011 seeking enhancement of the compensation.

4.This is a peculiar case where this Court need not interfere. According to the Insurance Company, the first claimant has left the deceased Kasi 23 years back and married another person and living with him along with three children and obtained legal heir certificate from the Tahsildar, unfortunately, the lower Court has held that the Tahsildar has cancelled the legal heir certificate and awarded the compensation.

5.In view of the same, without going into the merits of the matter, the impugned award dated 30.11.2009 is set aside and the matter is remitted back to the lower Court for fresh consideration with regard to the legal heirship. Since the matter is remitted back to the lower Court, the Insurance Company is permitted to withdraw the entire award amount of Rs.2,22,200/- [Rupees two lakhs twenty two thousand two hundred only] deposited in the credit of M.C.O.P.No.48 of 2007 on the file of the Motor Accidents Claims Tribunal [District Court], Thiruvannamalai along with an interest at the rate of 7.5%p.a.

6.With the above direction, C.M.A.No.1483 of 2011 filed by the Insurance Company is allowed whereas the C.M.A.No.1220 of 2011 filed by the claimants seeking enhancement is disposed of and the matter is remitted back to the Court below for fresh consideration as stated above. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

1.The Motor Accidents Claims Tribunal [District Court],
Thiruvannamalai.

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

+1cc to Mr.M.Malar, Advocate, S.R.No.59039

+1cc to Mr.Sreevidhya, Advocate, S.R.No.59447

C.M.A. NO.1483 AND 1220 OF 2011 AND
M.P.NO.1 OF 2011 & M.P.NO.1 OF 2015

gj (CO)
Srg (21/01/2016)