

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.08.2015

CORAM

THE HON'BLE MR.JUSTICE C.S.KARNAN

C.M.A.No.343 of 2013

and

M.P.No.1 of 2013

M/s.Bajaj Allianz General Insurance Co. Ltd.,
Surya Bala Autos Private Ltd.,
Old No.1662, New No.1062/1,
Trichy Road, Sungam Sinthamani Bus Stop,
Coimbatore.

..Appellant/3rd Respondent

vs

1.R.Subramaniam
2.M.Nelson
3.P.Moses

..Respondents/Petitioner/Respondents 1 & 2

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicle Act, 1988, against the judgment and decree in M.C.O.P.No.258 of 2008, dated 20.02.2012 on the file of the Motor Accidents Claims Tribunal, First Additional District Court, Coimbatore.

For Appellant : Mr.M.B.Gopalan

For Respondents: Mr.L.Santhoshkumar (for R1)

JUDGMENT

On 03.12.2007, when the (deceased) S.Mohan was riding his TVS 50 motorcycle bearing Registration No.TN-37-AL-4241, on the Brook Bond Road, Coimbatore at about 10.00 p.m., the motorcycle bearing Registration No.TN-38-AR-0528, coming from the opposite direction and driven in a negligent manner dashed against him. As a result, the (deceased) had sustained grievous injuries and he was admitted in a private hospital, wherein he expired on 09.12.2007, inspite of medical treatment. Hence, the father of the deceased had filed claim petition against the owner and insurer of offending vehicle.

2. The Insurance Company had filed a counter statement and resisted the claim. The respondent submits that the vehicle bearing registration No.TN-38-AR-0528 had not been involved in the said accident. The deceased did not possess valid driving licence to ride his motorcycle. The respondent denied the contentions in claim regarding age, income and occupation of the deceased.

3. After considering the averments of both sides, the Tribunal had framed 3 issues and recorded the evidence of claimant's side and evidence of respondent's side and after perusing the documents marked by both parties, granted compensation of a sum of Rs.4,42,150/- with interest at the rate of 9% per annum. Against the said award and decree, the Insurance Company has filed the above appeal.

4. The highly competent counsel appearing for the appellant submits that as per the F.I.R., rough sketch, it is evident that the accident had been committed by the deceased through his own negligence. The deceased had ridden his motorcycle bearing Registration No.TN-37-AL-4241 and dashed it against the motorcycle bearing Registration No.TN-38-AR-0528. Therefore, the Insurance Company is not liable to pay any compensation. The very competent counsel further submits that the appellant has marked Ex.R1, i.e. proceedings of criminal case which had been levelled against the deceased. Supporting this document RW1 had also adduced evidence. The F.I.R. has been registered against the deceased and the rough sketch also shows that the accident had been caused by negligence of deceased. Hence, the learned counsel entreats the Court to set aside the award.

5. The highly competent counsel Mr.L.Santhoshkumar appearing for the claimant submits that when the deceased was driving his motorcycle bearing Registration No.TN-37-AL-4241 on the brook bond road, the motorcycle bearing Registration No.TN-38-AR-0528, coming from the opposite direction and driven in a rash manner dashed against the vehicle of deceased. As such, the rider of the motorcycle bearing Registration No.TN-38-AR-0528 has caused the accident by his negligence. The Traffic Investigation Wing has wrongly registered an F.I.R. against the deceased. As such, it is a one sided decision. Therefore, the F.I.R. and rough sketch are not genuine. The very competent counsel further submits that the deceased is aged about 25 years and he was studying B.C.A. Course at Bharathiyar University, Coimbatore. Besides, he was a D.T.P. Operator in offset printing press and was earning Rs.6,300/- per month.

6. The Tribunal had not granted adequate compensation under the head of funeral expenses, love and affection, medical expenses and transport. Hence, the learned counsel entreats the

Court to dismiss the above appeal since the Tribunal had framed four issues on the deceased to award on merits.

7. Per contra, the very competent counsel for the appellant submits that the F.I.R. and rough sketch are vital documents. The Inspector of Police, attached to the traffic investigation wing, is the competent authority and he has registered a criminal case against the deceased, who had committed an accident in a negligent manner. The learned counsel further submits that the appellant had deposited a sum of Rs.25,000/- alone.

8. On considering the facts and circumstances of the case and arguments advanced by the learned counsel on either side and on perusing the typed set of papers, this Court is of the view that the F.I.R. has been registered against the deceased in a one-sided decision. Further, there is no elaborate discussion before the criminal Court regarding the said accident. Hence, the negligence cannot be fastened on the deceased. The deceased's age was 25 years and he was an earning member. Besides, he was doing B.C.A. Course at Bharathiyar University. Therefore, the quantum of compensation of a sum of Rs.4,42,150/- awarded is not on the higher side. Hence, the award is confirmed. This Court directs the appellant to execute the award passed in M.C.O.P.No.258 of 2008, on the file of Motor Accidents Claims Tribunal, Coimbatore dated 20.02.2012, by way of deposit along with interest as fixed by the Tribunal within a period of six weeks from the date of receipt of this order, subject to deduction of earlier deposits made by the appellant. After such deposit being made, it is open to the claimant to withdraw the entire compensation amount, with accrued interest thereon lying in the credit of M.C.O.P.No.258 of 2008, on the file of the Motor Accidents Claims Tribunal, Coimbatore, after filing a memo along with a copy of this order.

9. In the result, the above civil miscellaneous appeal is dismissed. Consequently, the judgment and decree passed in M.C.O.P.No.258 of 2008, on the file of the Motor Accidents Claims Tribunal, First Additional District Court, Coimbatore, dated 20.02.2012, is confirmed. No costs. Consequently, connected miscellaneous petition is closed.

sd/-
ASSISTANT REGISTRAR (CS-II)

/ TRUE COPY /

SUB-ASSISTANT REGISTRAR

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To

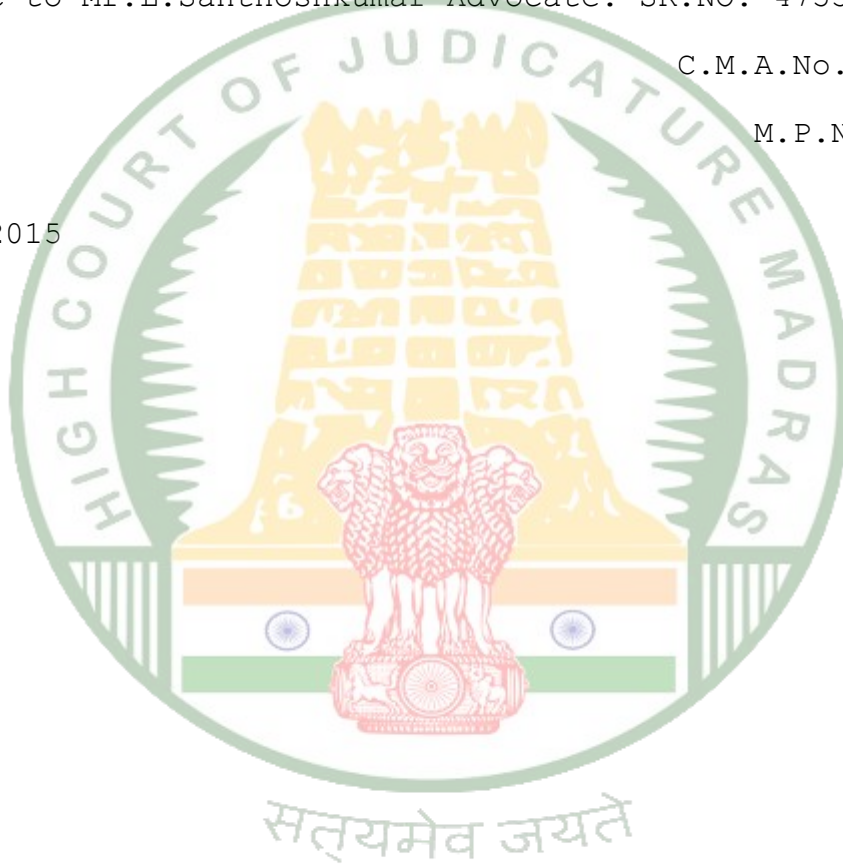
1.The Motor Accidents Claims Tribunal
I Additional District Court,
Coimbatore.

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

+1 CC to Mr.L.Santhoshkumar Advocate. SR.NO. 47557

C.M.A.No.343 of 2013
and
M.P.No.1 of 2013

CO-GJ
JD 16/10/2015



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