

IN THE HIGH COURT OF JUDICATURE AT MADRAS

CAV ON 14/10/2015

DATED:16/10/2015

CORAM

THE HONOURABLE MR.JUSTICE C.S.KARNAN

C.M.A.No.749 of 2013 &
M.P.No.1 of 2013

Bajaj Allianz General Insurance
Company Limited,
Prince Towers,
24-25, College Road,
Chennai-6.

... Appellant/2nd Respondent

Vs.

1.M.Vimala
2.P.Mani

...Respondents 1&2/Claimants

3.R.V.Nagarajan

...3rd Respondent/1st Respondent

(Third respondent exparte in lower Court
and hence, notice to third respondent
may kindly be dispensed with)

PRAYER: Civil Miscellaneous Appeal is filed under Section 173
(1) of Motor Vehicles Act, 1988 to set-aside the award and
decree dated 03.10.2012 made in M.C.O.P.No.1665 of 2009, on
the file of the Motor Accidents Claims Tribunal, III Court of
Small Causes, Chennai, slice down the quantum of award by a
substantial margin.

For Appellant : Mr.Srinivasan Ramalingam
For Respondents : Mr.S.Ravikumar for R1 and R2
R3 (Exparte)

J U D G M E N T

The short facts of the case are as follows:-

On 09.05.2009, at about 17.15 p.m. when the deceased
was riding a motorcycle bearing registration No.TN-01-AH-7241,
on the Stephenson Road, Chennai, the van bearing registration
No.TN-02-J-0745, coming from the opposite direction and
driven by its driver in a rash and negligent manner, dashed
against him. As a result, he had sustained grievous injuries
and succumbed to it. Hence, the parents of the deceased had
levelled a claim petition against the owner and insurer of
the offending vehicle and claimed compensation.

2. The Insurance Company had filed a counter statement and resisted the claim petition. The Insurance Company had submitted that in the said accident, two vehicles had been involved and the deceased had ridden his motorcycle in a negligent manner and caused the accident and hence, contributory negligence has to be attributed. It was further submitted that the van was not covered under valid records.

3. After considering the averments of both parties, the Tribunal had framed four issues, viz.,

"(i) Whether the accident had happened due to the rash and negligent driving of the driver of the first respondent's van bearing registration No. TN-02-J-0745?

(ii) Whether the respondents are liable to pay the compensation?

(iii) Whether the petitioners are entitled for compensation?

(iv) To what relief are the petitioners entitled to?"

4. On the side of the claimant three witnesses were examined and nine documents were marked. On the side of the respondents, no witnesses, no documents.

5. After recording evidence of the witnesses and on perusing the documents marked by the claimants, the Tribunal had awarded a sum of Rs.7,60,000/- with interest.

6. Against the said award and decree, the Insurance Company has filed the above appeal.

7. The learned counsel Mr.Srinivasan Ramalingam appearing for the appellant submits that the deceased was a bachelor and he was not an earning member, but the Tribunal had fixed the income of deceased at Rs.6,750/- per month which is erroneous and assessed the compensation. Besides, the Tribunal had awarded a sum of Rs.1,00,000/- under the head of loss of love and affection to the claimants, which is also on the higher side. Further, the Tribunal had awarded compensation which is more than the original claim. Hence, the highly competent counsel entreats the Court to set-aside the award.

8. The learned counsel Mr.S.Ravikumar appearing for the claimants submits that the deceased was a second year B.Com student and he was aged about 20 years. The parents of the deceased had lost their only son in the said accident. The deceased was working on a part time job and earning income. The parents were depending on the future prospects of the

deceased. The claimants are depending upon the support of the deceased to lead their life. Now, the sorrowful claimants are suffering without any support. The Tribunal had granted reasonable compensation and the claimants also have paid the deficit Court fee, as directed by the Tribunal. As such, the compensation amount assessed by the Tribunal is an appropriate one.

9. On considering the facts and circumstances of the case and arguments advanced by the learned counsels on either side and on perusing the typed-set of papers, this Court is of the view that the deceased was a second year student in the Commerce Degree Course and he was doing a part time job and earning income. The claimants have lost their only son in the said accident. The F.I.R. has been registered against the driver of the offending vehicle which has been insured with the appellant herein. Therefore, the quantum and liability decided by the Tribunal is appropriate. Hence, the above appeal is dismissed. This Court directed the appellant to deposit the entire compensation amount with interest. Now, the claimants are at liberty to withdraw the compensation amount with interest, after filing a Memo, along with a copy of this order, as per ratio fixed by the Tribunal. There is no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

r n s

To

The III Court of Small Causes,
Motor Accidents Claims Tribunal,
Chennai.

+ 1 cc to Mr.Srinivasan Ramalingam, Advocate SR.56425

Copy to: The Section Officer,
VR Section, High Court, Madras.

+ 1 cc to Mr.S.Ravikumar, Advocate Sr 66427 (7/1/16)

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M.P.No.1 of 2013

SV(CO)

EU 21-12-15

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