



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.09.2015

CORAM:

THE HONOURABLE MR.JUSTICE P.DEVADASS

C.M.A. (MD)Nos.917 & 918 of 2015

and

M.P. (MD)Nos.1 & 1 of 2015

ICICI Lombard General Insurance Co.Ltd.,
Jenith House, Kesava Rao Gadi Marg,
Mahalakshmi,
Mumbai 400 034.

.. Appellant in both CMAs/ 2nd Respondent in
both the MCOPs.

-vs-

M.Velammal

.. 1st Respondent in CMA.917/2011/
Petitioner in MCOP No.352/2007

M.Palaniammal

.. 1st Respondent in CMA.918/2011 /
Petitioner in MCOP.No.354/2007

S.Selvam

.. 2nd Respondent in both CMAs /
1st repondent in both MCOPs.

COMMON PRAYER: Appeals are filed under Section 173 of the Motor Vehicle Act, 1988, against the fair and decreetal order, dated 2.6.2010 made in MCOP.Nos.352 & 354 of 2007, respectively on the file of Motor Accidents Claims Tribunal (Principal Sub Court), Karur.

For Appellant : Mr.S.Srinivasa Raghavan
(In both CMAs)

For Respondent-1 : Mr.V.Balaji
(In both CMAs)

For Respondent-2 : Mr.Niranjan S.Kumar
(In both CMAs)

COMMON JUDGMENT

As these two CMAs are connected on facts, evidence, law and common arguments were heard and are being disposed of by this common judgment.

2. On 23.09.2007, at about 7.30 p.m., on the Karur - Erode, near Kolor Road, Vellammal and Palaniammal came walking along the road. At that time, the owner of the two-wheeler TN-47-R-2080, came driven the vehicle in a rash and negligent manner and dashed against the two ladies. They have sustained multiple injuries.

3. In M.C.O.P.No.352/2007 Velammal claimed compensation and in M.C.O.P.No.354/2007 Palaniammal claimed compensation. The Tribunal granted them total compensation at Rs.68,800/- and 42,800/- respectively fixing the negligence on the part of the bike rider.



4. The company disputes its liability to pay the compensation amounts. The claimants' lawyer repelled him.

5. On perusal of the materials on record and the impugned judgment of the claims Tribunal, it is seen that Ex.R17 licence belongs to the bike owner. The RTO witness also stated that the bike rider hold only a learner's licence, at the time of accident. On account of that, the company claims exoneration from its liability.

6. Under similar circumstances, the Hon'ble Supreme Court in Jawahar Singh vs Bala Jain & Ors (2011 (7) MLJ 833 (SC) held that the Company cannot avoid its statutory liability. It must pay the amount to the injured and claim the same from its insured / vehicle owner. Thus, pay and recovery has been invoked in Jawahar Singh's case..

7. In the circumstances, the company cannot be allowed to avoid its liability. However, the company has to pay the amount to the claimants and it is entitled to recover the same from the vehicle owner.

8. In the circumstances, the Award passed by the claims Tribunal are upheld. The appellant / Insurance Company shall deposit the entire Award amount in both the cases and the claimants shall be paid their respective share of amount. On such deposit, the appellant is entitled to proceed in execution as against the vehicle owner. For this purpose, there is no need to file a separate suit. It can also have all the remedy as provided in Order 21 CPC. If assistance is needed, the concerned RTO also shall provide necessary assistance to the decree holder. Accordingly, two CMAS are disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

/True copy/

Sub Assistant Registrar

To

1. The Principal District Judge,
Karur.

2. The Motor Accidents Claims Tribunal,
(Principal Sub Judge)
Karur.

+1 CC to Mr. Mr. S. Srinivasan, Advocate, SR No. 54161

C.M.A. (MD) Nos. 917 & 918 of 2011
14.09.2015

SH/SKS-RR/02.12.2015:2P/4C