

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATE: 01.07.2016
CORAM
THE HONOURABLE MR.JUSTICE T. MATHIVANAN
C.M.A.No.3821 of 2011
&
M.P.No.1 of 2011

M/s. Bajaj Allianz General Insurance Company Ltd.,
The Branch Manager,
No.11, People's Park,
Government Arts College Road,
Coimbatore.

...Appellant

Versus

1.Mr.Rayan
2.Mr.Bannari
3.Mr.Palani
4.Gopika
5.Mr.Ashok Kumar
6.Mr.N.V.Selvaraj

... Respondents

(Respondents 5 & 6 set ex-parte in lower Court
and hence notice may be dispensed with)

Prayer: Civil Miscellaneous Appeal has been filed under Section
173 of the Motor Vehicles Act of 1988, against the Judgement
and decree dated 30.10.2010 passed in M.C.O.P.No.1548 of 2007 on
the file of the Motor Accident Claims Tribunal (Additional
District and Sessions Court, FTC-V), Coimbatore at Tirupur.

For Appellant :Mr.N.Vijayaraghavan
For RR1 to 4 :Mr.MA.P.Thangavel

JUDGMENT

Questioning the liability, the appellant/Insurance
Company has filed the present Civil Miscellaneous Appeal under
Section 173 of the Motor Vehicles Act 1988.

2.The respondents 1 to 4, who are the husband and children
of the deceased Rangji had moved the Motor accidents Claims
Tribunal (Additional District and Sessions Court, FTC-V),
Coimbatore at Tirupur, claiming a total sum of Rs.5,00,000/-
towards compensation for the death of the said Ranji, in a road
traffic accident said to have been taken place on 15.11.2007,

involving a Mini Door Auto, bearing registration No.TN-29-H-3776 belonging to the sixth respondent herein.

3. According to the claimants, the fifth respondent, who was on the steering wheel of the said Mini Door Auto had driven the same in a hectic speed coupled with rashness and dashed against the deceased. As a result of which, she had succumbed to injuries and shifted to Coimbatore Medical College Hospital at Coimbatore. The appellant/Insurance Company, while contesting the claim petition had taken a definite stand saying that the sixth respondent, who is the owner of the vehicle must satisfy the requirements of Rule 3 of the Central Motor Vehicles Rules 1989. Further, the appellant/Insurance Company had also contended that at the time of the accident the offending vehicle did not have the endorsement of transport vehicle as it is a transport vehicle and in the absence thereof, the Insurance Company is not at all liable to pay compensation. But ignoring the contention of the appellant/Insurance Company, the Tribunal had proceeded to pass the award, which is under challenge in this Appeal.

4. The age of the deceased was determined @ 54 years. Her monthly income was determined @ 3,900/- per mensem. Deducting 1/3rd, the 2/3rd remainder would be Rs.2,600/-. Since she was aged about 54 years, the multiplier of 11 was selected and accordingly, the pecuniary loss of the family was calculated @ Rs.3,43,200/-. Apart from this, the Tribunal had also awarded compensation under the following heads:

- (i) Loss of love and affection for the claimants 1 to 4
Rs.10,000/-each. Rs.40,000/-
- (ii) Loss of consortium to the first claimant
Rs.10,000/-
- (iii) Funeral Expenses
Rs. 2,000/-

The Tribunal had awarded the total compensation of Rs.3,95,200/- directing the appellant/Insurance Company to pay this amount with interest @ 7.5% per annum within a period of two months from the date of petition.

5. Mr. N. Vijayaraghavan, learned counsel appearing for the appellant has submitted that the Apex Court in a decision reported in 2009 ACJ 1411 had clearly confirmed the requirement of transport or commercial vehicle and the necessity of endorsement and in the absence of proof thereof, the appellant/Insurance Company, could not be held liable to pay compensation. Therefore, the learned counsel has urged that if at all this Court is going to confirm the award, the

appellant/Insurance Company might be directed to pay this amount and thereafter, permitted to recover the said amount from the owner of the vehicle viz., the sixth respondent herein by way of execution proceedings without actually filing the suit for recovery of money.

6.The submission made by the learned counsel Mr.N.Vijayaraghavan, has been considered by this Court.

7. In view of the above, this Court finds that the award of the Tribunal may be confirmed and the appellant/Insurance Company might be directed to pay the award amount alongwith accrued interest @ 7.5% per annum and thereafter, the appellant/Insurance Company be permitted to recover the said amount from the owner of the vehicle/ the sixth respondent herein, in accordance with the procedure as afore stated.

8.Accordingly, the Civil Miscellaneous Appeal is disposed of, confirming the award of the Tribunal. Consequently, connected miscellaneous petition is closed. No order as to costs.

9. The appellant/Insurance Company is directed to deposit the award amount with interest @7.5% to the credit of the claim petition, within a period of four weeks from the date of receipt of a copy of this order, if not deposited earlier and thereafter, recover the same from the sixth respondent/owner of the vehicle by way of execution proceedings without actually filing a suit for recover of money. On such deposit being made, the claimants are entitled to receive the entire award amount with the accrued interest there on directly from the Tribunal without actually filing a formal petition seeking permission.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1.The Motor Accident Claims Tribunal,
(Additional District and Sessions Court, FTC-V),
Coimbatore at Tirupur

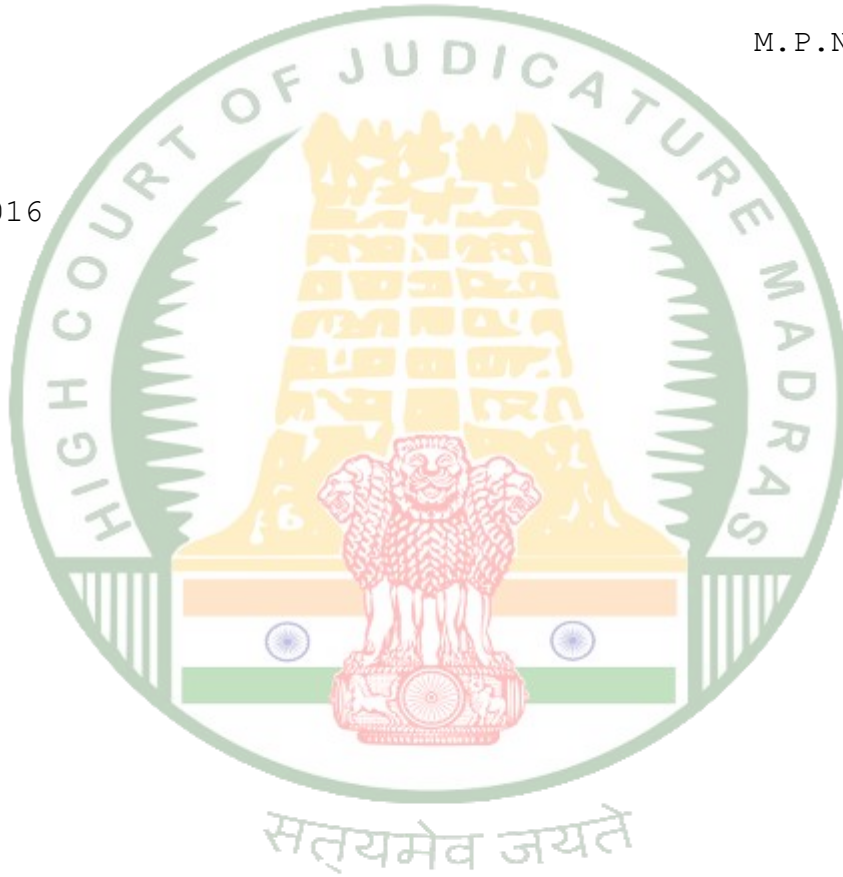
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2.The Section Officer
Varnacular Record Section
High Court Madras

+1 cc to M/s.MS.Gopalan Advocate sr 37387
+1 cc to Ma.P.Thangavel Advocate sr 37079

C.M.A.No.3821 of 2011
and
M.P.No.1 of 2011

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