

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.07.2017

CORAM:

THE HONOURABLE MR. JUSTICE R. SUBBIAH
and
THE HONOURABLE MR. JUSTICE A.D. JAGADISH CHANDIRA

Civil Miscellaneous Appeal No. 980 of 2017
and
C.M.P. No. 4864 of 2017

M/s. Bajaj Allianz General Insurance Co Ltd
Old No.203/3, New No.209/1
Second Floor, M.T.H. Road
Ambattur, Chennai – 600 053

.. Appellant

Versus

1. Mrs. Logamani
2. Ms. Girija
3. Minor. Giridharan
rep. By his mother and guardian
Mrs. Logamani
4. P. Udhayakumar

.. Respondents

Appeal filed under Section 173 of The Motor Vehicles Act, 1988 against the Decree and Judgment dated 09.06.2016 passed in M.C.O.P. No. 76 of 2010 on the file of Motor Accidents Claims Tribunal, Court of Principal Subordinate Judge at Chengalpattu

For Appellant : Mr. J. Michael Visuvasam
For Respondents : Mr. D. Ravichandar

JUDGMENT

(Judgment of the Court was delivered by **R. SUBBIAH, J**)

The Insurance company has come forward with this appeal questioning the validity and/or correctness of the Decree and Judgment dated 09.06.2016 passed in M.C.O.P. No. 76 of 2010 on the file of Motor Accidents Claims Tribunal, Court of Principal Subordinate Judge at Chengalpattu with respect to liability as well as the

quantum of compensation awarded in favour of the claimants.

2. The respondents 1 to 3 in this appeal are the legal heirs of the deceased P.P. Raman. The fourth respondent in this appeal is the owner of the vehicle – Eicher Lorry bearing Registration No. TN 21 AW 2367, which involved in the accident.

3. According to the claimants/respondents 1 to 3 herein, the deceased Raman was employed as Assistant Librarian in S.R.M. University, Potheri, Chengalpat Taluk and earning a sum of Rs.20,726/- per month. It is claimed that on 12.03.2009 when the deceased was travelling as a pillion rider in the two wheeler – TVS Champ bearing Registration No. TN 21 U 8769, driven by one Muthalagan, from Potheri to his house at Kattankulathur, near Government Milk Booth, the driver of the lorry bearing Registration No. TN 21 AW 2367 owned by the fourth respondent herein drove it in a rash and negligent manner and hit the two wheeler from the opposite direction at the point of 'U' turn near Government Milk Booth. In the impact, the deceased was thrown out of the vehicle and sustained severe injuries. The deceased was admitted in S.R.M. Hospital, Potheri for treatment and inspite of the treatment extended, the deceased succumbed to the injuries on the next day namely 13.03.2009. According to the claimants, the driver of the Eicher Lorry owned by the fourth respondent, which was insured with the appellant insurance company, is liable for the death of the deceased. At the time of accident, the deceased was aged 50 years. Therefore, the claimants have filed the claim petition claiming a sum of Rs.40,00,000/- as compensation.

4. The claim petition was resisted by the appellant – insurance company by contending that Eicher lorry bearing Registration No. TN 21 AW 2367 was driven

by its driver without a valid licence to drive the vehicle. According to the appellant, the driver of the lorry owned by the fourth respondent was in possession of a driving licence to drive only a Light Motor Transport Vehicle and he was not holding a licence to drive a Medium Goods Vehicle. Therefore, according to the appellant, the fourth respondent ought not to have permitted the driver, who was not having a valid licence, to drive the vehicle – Eicher Lorry and it is in contravention of Section 149 (2) of The Motor Vehicles Act. As the owner of the vehicle – fourth respondent had breached the terms and conditions of the insurance policy, the insurance company cannot be fastened with any liability to pay compensation to the claimants. As regards the quantum of compensation, the insurance company disputed the age, income and avocation of the deceased and prayed for dismissal of the claim petition.

5. Before the Tribunal, on behalf of the claimants, the first claimant examined herself as PW1 and two other witnesses were examined as Pws 2 and 3. Exs. P1 to P13 were marked on the side of the claimants. On behalf of the respondents, one Yuvaraj was examined as RW1 and two other witnesses were examined as RW2 and Ex.R1, copy of the insurance policy was marked. The Tribunal, on analysing the oral and documentary evidence, held that there is a valid and subsisting insurance policy in force at the time of accident. Merely because the driver of the vehicle did not possess a valid licence to drive the Eicher Lorry, the claimants cannot be deprived of the compensation amount for the death of the deceased. Accordingly, the Tribunal held that the Insurance Company as well as the fourth respondent herein are jointly and severally liable to pay the compensation amount. As regards the quantum, the Tribunal, on the basis of the

pay slip, Ex.P13 taken the monthly salary of the deceased at Rs.20,730/-. Applying multiplier '13' the Tribunal arrived at the loss of dependency at Rs.32,33,880/-. By adding 30% on Rs.20,730/- namely Rs.6219 towards future prospects and by giving 1/4 deduction towards his personal expenses, the Tribunal arrived at the total loss of dependency at Rs.31,53,033/-. The Tribunal also awarded other non-pecuniary loss and arrived at a total sum of Rs.38,58,686/-. Aggrieved by the award passed by the Tribunal, both on the ground of fastening the liability and the quantum of compensation, the present appeal has been filed by the Insurance Company.

6. The learned counsel for the appellant would vehemently contend that when there is a violation of policy condition on the part of the owner of the vehicle by permitting the driver of the Eicher Lorry to drive a vehicle to which he was not in possession of a licence, the Tribunal is not right in fastening the liability on the Insurance Company and instead directed the owner of the vehicle to pay the entire compensation amount. It is further submitted that while arriving at the compensation amount, the Tribunal ought to have given 1/3 deduction instead of giving 1/4 deduction towards personal expenses.

7. The learned counsel for the claimants/respondents 1 to 3 herein would contend that before the Tribunal, salary certificate, Ex.P13 was filed to show that the deceased was earning Rs.20,730/- based on which the Tribunal arrived at a just and fair compensation and it needs no interference by this Court.

8. We have considered the rival submissions and perused the materials placed on record, including the award passed by the Tribunal. As regards liability of

the Insurance Company to pay the compensation amount, we find that it is not the case of the appellant that the driver of the Eicher lorry, which was insured with them, did not possess any driving licence at all. On the contrary, it is the claim of the appellant that the driver of the vehicle was in possession of a licence to drive only a Light Motor Transport Vehicle and not a licence to drive a Medium Goods Vehicle. As rightly pointed out by the Tribunal, the object of the Motor Vehicles Act is to provide immediate relief to the family of the motor accident victims by means of monetary compensation. It is a benoalent legislation intended to provide succor to the family of the deceased who lost their life in the motor accident. Therefore, on technicalities, merely because the driver of the vehicle did not possess a licence to drive Medium Goods Vehicle, the claimants cannot be deprived of the compensation amount. Therefore, the Tribunal has rightly awarded the compensation amount and directed it to be paid by the appellant and the fourth respondent jointly and severally. Therefore, at best, the Insurance Company can pay the compensation amount and later recover it from the owner of the vehicle. In such view of the matter, we do not find any infirmity with the award passed by the Tribunal in so far as it relates to the direction to the appellant and the fourth respondent to jointly and severally pay the compensation amount.

9. As regards the quantum of compensation, it was proved before the Tribunal that the deceased was working as Assistant Librarian in S.R.M. University, Potheri and earning a sum of Rs.20,726/- as could be evidenced from the salary slip, Ex.P13. Having regard to the fact that the deceased died at the age of 50 years and had he been alive, he could have rendered service for another eight or ten years, the Tribunal has rightly added 30% of the salary earned by the deceased

towards future prospects and arrived at a sum of Rs.42,04,044/- as loss of income in which 1/4 amount namely Rs.10,51,011/- was deducted towards personal expenses to arrive at a sum of Rs.31,53,033/- towards loss of income. As rightly pointed out by the learned counsel for the appellant-Insurance company, the deceased was aged 50 years and taking into account of the same, the Tribunal ought to have given 1/3rd deduction towards his personal expenses instead of deducting 1/4 amount towards the same. Therefore, we feel that giving 1/3 amount of deduction towards personal expenses of the deceased would be justifiable. Accordingly, if 1/3 amount is deducted towards his personal expenses, the loss of income payable to the claimants could be arrived at Rs.42,04,444 – Rs.14,01,348 = Rs.28,03,096/-.

10. As regards the compensation awarded by the Tribunal under other heads, we feel that the amount of Rs.5,652.00 awarded towards medical expenses could be rounded off and awarded at Rs.6,000/- for easy calculation. Further, for funeral expenses and transportation, we feel that a sum of Rs.40,000/- over and above the sum of Rs.50,000/- awarded by the Tribunal would meet the ends of justice. Accordingly, we award Rs.90,000/- towards Transportation and Funeral expenses. Similarly, the amount awarded under the loss of estate at Rs.50,000/- warrants enhancement to Rs.1,00,000/- considering the facts and circumstances of this case and the prima age of the minor claimants 2 and 3, who were aged 19 years and 10 years respectively at which the deceased left behind them. However, we feel that the amount awarded by the Tribunal under other head such as Loss of Consortium to the first claimant and loss of love and affection to the minor claimants 2 and 3 are adequate, fair and reasonable.

10. In the result, we modify the compensation amount of Rs.38,58,686/- awarded by the Tribunal and reduce it to Rs.36,00,000/- as tabulated below:-

Loss of income	:	Rs.28,03,096.00
Loss of consortium	:	Rs. 2,00,000.00
Loss of love and affection (Rs.2,00,000 X 2)	:	Rs. 4,00,000.00
Funeral Expenses & Transportation	:	Rs. 90,000.00
Loss of Estate	:	Rs. 1,00,000.00
Medical Expenses	:	Rs. 6,000.00

		Rs.35,99,096.00
Rounded off to	:	Rs.36,00,000.00

11. In the result, the Decree and Judgment passed by the Tribunal is modified by reducing the compensation amount from Rs.38,58,686/- to Rs.36,00,000/-. The Civil Miscellaneous Appeal is partly allowed. No costs. Consequently, connected Civil Miscellaneous Petition No. 4864 of 2017 is closed. The appellant/Insurance Company is directed to deposit the compensation amount, as determined by us in this appeal, to the credit of M.C.O.P. No. 76 of 2010 on the file of Motor Accidents Claims Tribunal, Court of Principal Subordinate Judge at Chengalpattu, together with interest at the rate of 7.5% per annum, after adjusting the amount, if any, already deposited, within a period of eight weeks from the date of receipt of a copy of this Judgment. It is also open to the Insurance Company to pay the compensation amount and then recover it from the fourth respondent in a manner known to law. On such deposit, the first respondent/wife shall withdraw a total sum of Rs.18,00,000/- and the second claimant/daughter shall withdraw a sum of Rs.9,00,000/- with accrued interest. The share of the minor third claimant of

Rs.9,00,000/- is directed to be deposited in a Nationalised Bank in an interest bearing account till he attains majority. The first claimant is permitted to withdraw interest once in three months from and out of the amount deposited towards the share of the third claimant/minor for his welfare.

(R.P.S.J.,) (A.D.J.C.J.,)

28-07-2017

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Index : Yes / No

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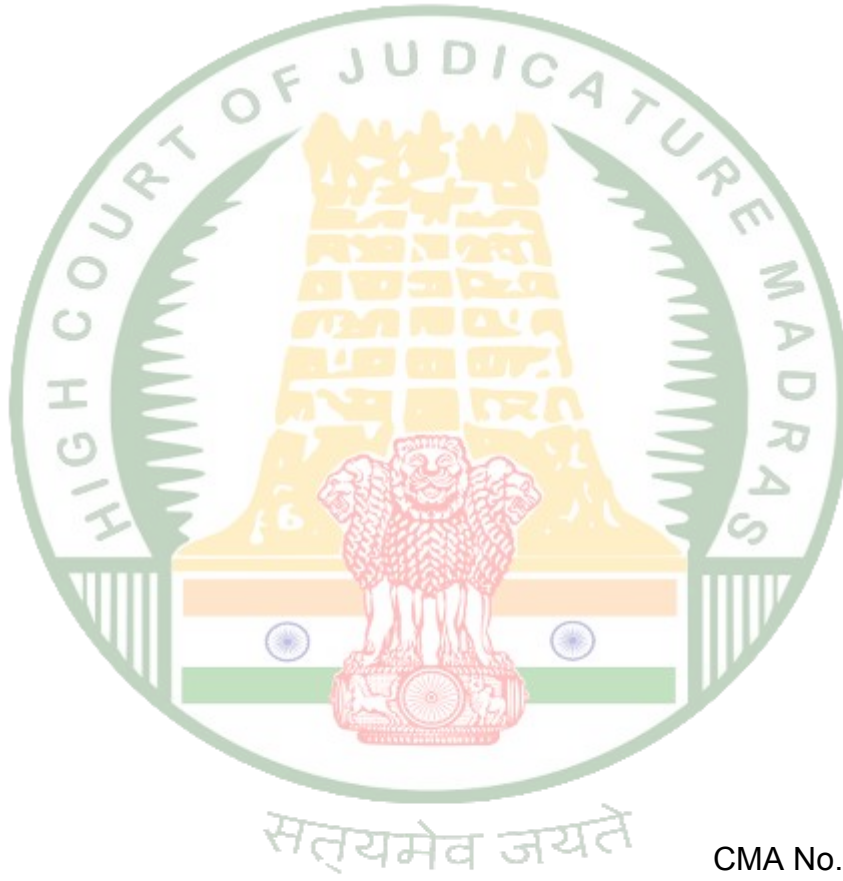
Principal Subordinate Judge
(Motor Accident Claims Tribunal)
Chengalpattu



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