

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.02.2017

CORAM:

THE HON'BLE MR. JUSTICE M.SATHYANARAYANAN
AND

THE HON'BLE MR.JUSTICE M.V.MURALIDARAN
C.M.A.Nos.1990 and 1991 of 2012
and M.P.Nos.1, 1 of 2012

M/s.Bajaj Alliance General Insurance Co. Ltd.,
GE Plaza, Airport Road, Yerwada,
Pune-411 066.

..Appellant in
both Appeals/2nd Respondent
vs.

1.N.Karthik
2.KMI Mather
3.T.Shanthi

4.National Insurance Co. Ltd.,
Erode.

5.ER.Rejith

6.P.Dharmadas ... Respondents in C.M.A.No.1990/2012/
Petitioner R1, R3 to R6
(respondents 2, 3, 5 and 6 remained exparte
before the Tribunal)

1.N.Malarvizhi

2.KMI Mather

3.D.Shanthi

4.National Insurance Co. Ltd.,
Erode.

5.ER.Rejith

6.P.Dharmadas

.. Respondents in C.M.A.No.1991/2012/
Petitioner R1,R3 to R6
(respondents 2, 3, 5 and 6 remained exparte
before the Tribunal)

Prayer in C.M.A.No.1990 of 2012: Civil Miscellaneous Appeal
filed under Section 173 of the Motor Vehicles Act, 1988 against
the decree and judgment dated 04.01.2011 made in M.C.O.P.No.88
of 2010 on the file of the Motor Accident Claims Tribunal, Chief
Judicial Magistrate, Erode.

Prayer in C.M.A.No.1991 of 2012: Civil Miscellaneous Appeal
filed under Section 173 of the Motor Vehicles Act, 1988 against
the decree and judgment dated 04.01.2011 made in M.C.O.P.No.34
of 2010 on the file of the Motor Accident Claims Tribunal, Chief

Judicial Magistrate, Erode.

For Appellant : Mr.D.Bhaskaran
in both CMAs.

For Respondents : Mr.R.Meenakshisundaram for R1
in both CMAs. Mr.S.Arunkumar for R4

C O M M O N J U D G M E N T

These appeals arise out of the common judgment and decree dated 04.01.2011 made in M.C.O.P.Nos.88 of 2010 and 34 of 2010 respectively on the file of the Motor Accidents Claims Tribunal/Chief Judicial Magistrate, Erode and as such, they are disposed of by this common judgment.

2. The second respondent in the above claim petitions, namely, M/s.Bajaj Alliance General Insurance Co.Ltd., had filed these appeals. The appellant challenge the findings primarily on the issue of negligence. For the sake convenience, array of parties as referred to by the Tribunal is adopted in these appeals also.

3. The claimants and others were proceeding from Erode to Ooty and on the early morning at 5.00 hours on 15.04.2006, they were proceeding in a van bearing Reg.No.TN09-F-3240, owned by the third respondent, driven by the sixth respondent, at Perundurai-Coimbatore National Highways as per traffic rules and regulations and at that juncture, a Toyoto car bearing Reg.No.KL07 NX-2137, owned by the first respondent, driven by the fifth respondent in a rash and negligent manner, came in the opposite direction and dashed against the van and the claimants and other inmates of the van got serious injuries and one died on the spot. The injured were taken to Lotus Hospital, Erode and were given treatment and the right hand of one of the injured/claimant was amputated, which resulted in permanent disability. The said claimant was aged about 21 years at the time of accident and was studying 3rd year B.E. (Mechanical) in I.R.T.T. College and claimed compensation of Rs.25 Lakhs.

4. The appellant-Insurance Company/second respondent in the claim petition, filed a counter denying the allegations and contended that there was a head on collision and the accident had occurred only on account of the rash and negligent driving of the van by the sixth respondent, owned by the third respondent and as such, they are not liable to indemnify and that apart, the drive of the offending vehicle did not possess valid licence at the time of accident and as such, they are not entitled to pay compensation.

5. In M.C.O.P.No.34 of 2010, the claimant is one of the occupants in the above said accident and she had also sustained grievous injuries and got admitted in Lotus Hospital, Erode and suffered permanent disability and at the time of accident, she is aged about 40 years and doing tailoring business and earning monthly income of Rs.2,000/- and she claimed compensation of Rs.25,00,000/-. The second respondent -Insurance Company/appellant herein had filed a counter statement denying the allegations and also taken the very same stand.

6. During the course of hearing, the claimants examined themselves as PWs.1 and 2 and also examined four other witnesses and marked Exs.P1 to P31. On behalf of the respondents 2 to 4, the Law Officer of the second respondent - Insurance Company was examined as RW1 and the Assistant Manager of the fourth respondent-Insurance Company was examined as RW2 and Exs.R1 to R7 were marked.

7. The Tribunal, on consideration of oral and documentary evidence, had found that the Toyoto car owned by the first respondent, driven by the fifth respondent, alone had caused the accident and taking into consideration all other relevant factors, has awarded the compensation.

8. The second respondent-Insurance Company, mainly aggrieved by the findings on negligence, came forward with these appeals.

9. The learned counsel appearing for the appellant-Insurance Company would vehemently contend that though it was technically a head-on collision, the accident took place at early morning 5.00 hours on 15.04.2006 and though the van owned by the third respondent was driven by the sixth respondent in a rash and negligent manner without adhering to the traffic rules and regulations and dashed against the car, in any event the compensation ought to have been apportioned between the appellant-Insurance Company and the fourth respondent-Insurance Company, who was the insurer of the Car and further drawn the attention of this Court to the records and prays for modification of the impugned award and decree passed by the Tribunal.

10. Per contra, Mr.R.Meenakshisundaram, learned counsel appearing for the first respondent/claimant would contend that as per Exs.R2 and R3, namely Judgment and decree dated 03.09.2009 passed in M.C.O.P.No.301 of 2006 on the file of the Sub-Court, Sankagiri, apportionment was 70% and 30% between the two insurance companies and however, as per Exs.R4 to R7, namely the judgment and decrees dated 07.11.2008, 26.09.2008, 07.11.2008 and 07.11.2008 passed in MC.O.P.Nos.35, 47, 30 and 33 of 2007 respectively, the entire liability was fastened upon the driver of the car and as such, the findings rendered by the

Tribunal are perfectly in order and prays for dismissal of these appeals.

11. This Court has considered the rival submissions and also perused the entire materials placed before it.

12. In Ex.P1/F.I.R. itself it has been indicated that the Toyota Car, owned by the first respondent, was driven by the fifth respondent in a rash and negligent manner and as a consequence, it dashed against the van and that apart, in Exs.R4 to R7, judgments and decree passed in claim petitions filed by the injured, the entire liability was also fastened upon the car and as a consequence, the appellant-Insurance Company was directed to indemnify the loss. The Tribunal has also taken into consideration Exs.R2 and R3 and further taking into consideration the oral and documentary evidence let in by the parties, held that the Toyota car was driven in a rash and negligent manner and as a result, the accident had occurred and the claimants had sustained injuries.

13. This Court, on going through the oral and documentary evidence, is of the view that the findings rendered by the Tribunal on the issue of liability/negligence does not warrants interference, as it came to be rendered on proper appreciation of oral and documentary evidence. Insofar as the quantum of compensation awarded to the claimants are concerned, no serious arguments have been advanced. Even otherwise, this Court on a careful scrutiny and appreciation of the oral and documentary evidence, is of the view that the quantum of compensation awarded by the Tribunal cannot be said to be exorbitant or on the higher side and it is a just and fair compensation.

14. In the result, these Civil Miscellaneous Appeals are dismissed, confirming the common judgment and decree dated dated 04.01.2011 made in M.C.O.P.Nos.88 of 2010 and 34 of 2010 on the file of the Motor Accidents Claims Tribunal/Chief Judicial Magistrate, Erode. No costs. Consequently, connected miscellaneous petitions are dismissed.

-s/d-
Assistant Registrar

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Sub-Assistant Registrar

jvm

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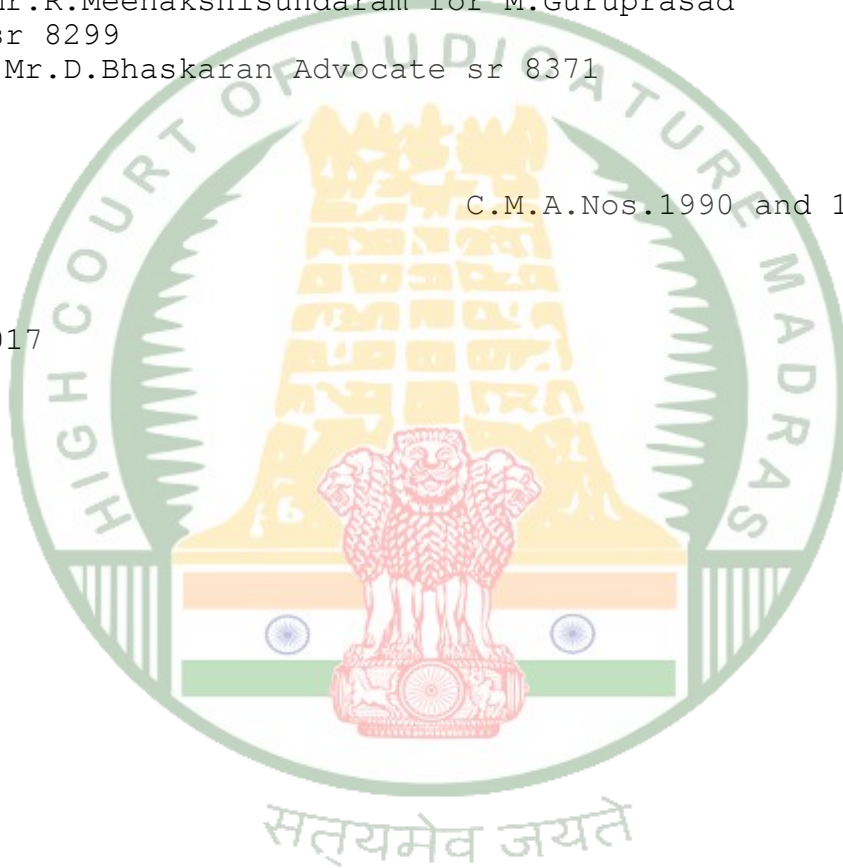
1.The Motor Accident Claims Tribunal/
Chief Judicial Magistrate, Erode.

2.The Section Officer
VR Section High Court Madras

+1 cc to Mr.S.Arunkumar Advocate sr 8187
+1 cc to Mr.R.Meenakshisundaram for M.Guruprasad
Advocate sr 8299
+2 ccs to Mr.D.Bhaskaran Advocate sr 8371

C.M.A.Nos.1990 and 1991 of 2012

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