



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :20.09.2018

CORAM:

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.2931 of 2008

AND

MP.No.1 of 2008

Bajaj Allianz General Insurance Co. Ltd.,
Prince Towers, 5th floor,
No.25/26, College Road,
Nungambakkam, Chennai - 600 006. ...Appellant

Vs

1.B.Fathima
2.Iqbal
3.B.Raffiq
4.B.Rahiq
5.B.Imtiyaz
6.B.Banu (Minor)
7.M.Askari Begam
(minor rep. by mother and NF 1st Respondent)

8.R.Mohan Raman
(8th Respondent Exparte in Lower Court
and hence notice may be dispensed with)

...Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree in M.C.O.P.No.5822 of 2003, dated 06.06.2008, on the file of the Motor Accidents Claims Tribunal, IV Court of Small Causes, Chennai.

For Appellant : Mr.N.Vijayaraghavan
For Respondents 1 to 7 : Not ready in notice
R8 - Ex parte

JUDGMENT

The instant appeal has been filed by the Insurance Company challenging the Award dated 06.06.2008, passed by the Motor Accident Claims Tribunal, IV Court of Small Causes, Chennai in M.C.O.P.No.5822 of 2003.



The brief facts leading to the filing of the instant appeal are as follows:

2. One M.Baba died on 09.09.2003, as a result of an accident caused by a motor cycle bearing Registration No.TN-22-S-0924 owned by the eighth respondent and insured with the Appellant. The dependents of the deceased Baba who are the respondents 1 to 7 in this appeal, preferred a claim before the Motor Accident Claims Tribunal in M.C.O.P.No.5822 of 2003, seeking a compensation of Rs.6,00,000/- for the death of Baba. The Motor Accident Claims Tribunal by its Award dated 06.06.2008 in M.C.O.P.No.5822 of 2003, directed the Appellant to pay the respondents 1 to 7 a sum of Rs.1,59,500/- together with interest at the rate of 7.5% per annum from the date of claim till the date of realization.

3. Aggrieved by the Award dated 06.06.2008, passed by the Motor Accident Claims Tribunal in M.C.O.P.No.5822 of 2003, the instant appeal has been filed by the Insurance Company.

4. Heard, Mr.N.Vijayaraghavan, learned counsel for the Appellant. Till date, notice has not been served on the respondents in this appeal. Since the appeal relates to the year 2008 and this Court is going to confirm the Award, there is no necessity to serve the notice in this appeal on the respondents.

5. According to the learned counsel for the Appellant, even though the First Information Report has been registered only against the deceased, the Tribunal has given an erroneous finding that only due to rash and negligent driving by the driver of the vehicle insured with the Appellant, the accident had happened.

6. This Court has examined the impugned Award. Excepting for the First Information Report, no evidence has been produced by the Appellant to disprove the claim of the respondents 1 to 7 that only due to the rash and negligent driving by the driver of the vehicle insured with the Appellant, the accident had happened. The respondents 1 to 7 have filed six documents before the Tribunal, which were marked as Ex.P1 to Ex.P6 and also examined two witnesses namely the first respondent in this appeal as well as Mr.Mohan, an eye witness. A copy of the plan submitted by the police was also marked as Ex.P3 before the Tribunal. Based on these documents, the Tribunal has given a clear finding that only due to the rash and negligent driving by the driver of the vehicle insured with the Appellant, the accident had happened.



7. Under section 163 (a) of the Motor Vehicles Act, it is for the insurer to establish that there is no negligence on the part of the driver of the vehicle which is insured with them. In the instant case, the Appellant has not been able to establish before the Tribunal that the driver of the vehicle insured with them is not at fault.

8. In the light of the above observations, this Court is of the considered view that there is no merit in the instant appeal. Accordingly, the appeal is dismissed. Consequently, the connected miscellaneous petition is closed. However, there shall be no order as to costs.

9. The Appellant is directed to deposit the amount awarded by the Tribunal together with interest, after deducting the amount that has already deposited, to the credit of MCOP.No.5822 of 2003, on the file of the Motor Accidents Claims Tribunal, IV Court of Small Causes, Chennai, within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the respondents 1 to 7 are permitted to withdraw the amount lying to the credit of MCOP.No.5822 of 2003, on the file of the Motor Accidents Claims Tribunal, IV Court of Small Causes, Chennai by filing an appropriate application.

Sd/-

Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

mtl/nl

To

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

2.The Section Officer,
Vernacular Section,
Madras High Court.

+1cc to Mr.M.B.Gopalan, Advocate, S.R.No. 65611

C.M.A.No.2931 of 2008

AND

MP.No.1 of 2008

RSV(CO)
GN(23/10/2018)