

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.04.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.Nos.940 and 941 of 2017
and connected Miscellaneous Petitions

CMA.No.940 of 2017:-

Bajaj Allianz General Insurance Company Limited
No.25, 25 Prince Towers
4th Floor, Chennai-600 006 ...Appellant/2nd respondent.

Versus

- 1.Rajeswari
- 2.Rajendran
- 3.Bommi ...Respondents 1 to 3/
Petitioners
- 4.Venkata Rathnamma Gujju ...Respondent No.4/
1st Respondent.

CMA.No.941 of 2017:-

Bajaj Allianz General Insurance Company Limited
No.25, 25 Prince Towers
4th floor, Chennai-600 006 ...Appellant/2nd respondent

Versus

- 1.L.Sivakumar ...1st respondent/Petitioner
- 2.Venkata Rathnamma Gujju ...2nd respondent/1st respondent.

Prayer in both Appeals:

Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 23.02.2016 made in M.C.O.P.Nos.4120 of 2011 and 957 of 2010 on the file of the Motor Accident Claims Tribunal, Special Sub Court No.1, Chennai.

For Appellant in both CMAs.: Mr.N.Vijayaraghavan

For respondents : Mr.K.Sivakumar for R1 to R3
in CMA.No.940/2017.

: Mr.K.Varadha Kamaraj for R1
in CMA.No.941/2017.

R4- Remained Exparte in C.M.A. 940/2017.

R2- Remained Exparte in C.M.A. 941/2017 before the Tribunal

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

The Insurance Company has filed the above two appeals challenging the judgment and decree dated 23.02.2016 made in M.C.O.P.Nos.4120 of 2011 and 957 of 2010 on the file of the Motor Accident Claims Tribunal, Special Sub Court No.1, Chennai.

2.1. For the sake of convenience, the parties are referred to hereunder according to their litigative status before the Tribunal. The brief facts of both cases is that on 28.05.2009, at about 11.30 p.m., while the deceased R.Manimaran was riding motor cycle bearing Reg.No.TN-23-AX-8097 along with L.Sivakumar, Petitioner in MCOP.No.4120/2011 as pillion rider, in Thiruvallur to SengaduRoad near Palivakkam Bus Stop, hit against a parked container Trailer Lorry bearing Reg.No.AP-27-X-0099 and thereby, both the rider and pillion rider sustained injuries due to which the rider died. Therefore, Petition in MCOP.No.4120/2011 is filed by the said pillion rider claiming compensation of Rs.6,00,000/- for the injuries sustained in the accident and Petition in MCOP.No.957 of 2010 is filed by the Legal Heirs of R.Manimaran, claiming compensation of Rs.10,00,000/- for the death of Manimaran.

2.2. The Petitioners in MCOP.No.957 of 2010 states that the deceased R.Manimaran was aged 23 years, working as Fitter Technician was earning Rs.4500/- per month.

2.3. The Petitioner in MCOP.No.4120 of 2011 states that he was aged 22 years, working as Mason and was earning Rs.10,000/- per month. He suffered severe head injury and unable to attend to his work and suffered loss of earning.

3. On the other hand, opposing the claim of both the Petitions, the 2nd respondent-Insurance company by filing counter contended that the accident as alleged by the Petitioners did not occur. It is not correct to say that the Lorry bearing Reg.No.AP-27-X-0099 was parked in the middle of the road. The rider of the two wheeler alone drove his vehicle at high speed

in a rash and negligent manner and dashed against the rear side of the Lorry. The owner and insurer of the motor cycle were not impleaded and they alone are liable to pay the compensation. The non-joinder of necessary parties is fatal to the case. The compensation claimed by the Petitioners is exorbitant. Thus the 2nd respondent sought for dismissal of both the petitions.

4. Before the Tribunal, both MCOPs were taken up together for joint trial and on the side of the Petitioners, P.W.1 to P.W.3 were examined and documents Ex.P.1 to Ex.P.16 was produced to prove their claim. While the 1st respondent remained exparte, on the side of the 2nd respondent/Insurance company, R.W.1 and R.W.2 were examined and Ex.R.1 to Ex.R.3 was produced to counter the claim of the Petitioners. On the basis of available evidence, the Tribunal found that the negligence of the 1st respondent Lorry driver alone caused the accident and passed award for a sum of Rs.8,83,000/- in MCOP.No.957 of 2010 and Rs.2,52,000/- in MCOP.No.4120 of 2011. Aggrieved over the said finding of the Tribunal, the 2nd respondent-Insurance company has come forward with the present appeals.

5. The learned counsel for the appellant/Insurance company contends that the Lorry was parked on the side of the road and the same is established by the evidence of R.W.1 and R.W.2, but the Tribunal wrongly fixed the entire liability on the 1st respondent, whereas the accident has occurred only due to negligence of the deceased. The Tribunal ought to have fixed atleast contributory negligence on the two wheeler rider, but failed to do so. The quantum of compensation is excessive. Thus, the 2nd respondent sought for setting aside the award passed by the Tribunal, by entertaining the appeal.

6. Per contra, the learned counsel for the 2nd respondent/Petitioners contends that the Tribunal fixed the entire negligence on the 1st respondent Lorry driver, since he parked the vehicle on the middle of the road without any warning signal. The quantum of the award passed by the Tribunal is just and proper. As such, the Petitioners/claimants sought for dismissal of the appeals.

7. The appeals are filed mainly on the issue of contributory negligence only. The quantum is not seriously disputed. As such, the only issue to be decided is as to whether the accident occurred due to negligence of the 1st respondent lorry driver alone or the deceased two wheeler rider also contributed to the accident.

8. The Petitioner in MCOP.No.4120 of 2011 who travelled as pillion rider in the two wheeler driven by the deceased R.Manimaran deposed as P.W.1 and clearly stated about the manner in which the accident occurred. The Police initially registered

a case against the deceased rider of the two wheeler as evidenced by Ex.P.2-FIR. Subsequently, FIR was altered as per Ex.P.9-Change of offence section/Alteration Report wherein the driver of the 1st respondent lorry was shown as accused. Therefore, it is clear from the said documents that the driver of the 1st respondent lorry parked the vehicle in the middle of the road without any indicator and thereby caused the accident. The driver of the Lorry deposed as R.W.1 and denied the claim of the Petitioner. However, R.W.1 admitted that his driving licence was cancelled for a period of six months following the accident. It is therefore clear that the 1st respondent Lorry was parked in the middle of the road without warning signal and thereby caused the accident. However, since it was night hours and the Lorry was parked in the middle of the road without indication, the rider of the two wheeler should have been careful while driving in the highway and if he had been alert, he could have avoided dashing against the parked lorry. As such, the contention of the appellant-Insurance company that the deceased also contributed to the accident is to be accepted.

9. As stated above, the act of the driver of the 1st respondent Lorry in parking the vehicle on the middle of the road, without any signal in the night hours is the main cause for the accident, whereas, the deceased/rider of the two wheeler contributed to the accident by being not alert enough while driving his two wheeler. As such, it is appropriate to fix negligence on the part of the 1st respondent Lorry driver and rider of the two wheeler at 80% : 20% respectively.

10. As far as Petitioner in MCOP.No.4120 of 2011 is concerned, he being the pillion rider, it is open to him to seek compensation from any one of the vehicle owner and insurer and further he was only a pillion rider and therefore, no contributory negligence can be fixed on him. As such, the Petitioner in MCOP.No.4120 of 2011 is entitled to seek entire compensation from the respondents.

11. The Tribunal has fixed the quantum of award in MCOP.No.957 of 2010 at Rs.8,83,000/- and in MCOP.No.4120 of 2011 at Rs.2,52,000/-. The said compensation amount is just and proper. Further, the quantum is not seriously agitated by learned counsel appearing on both sides and therefore, this court confirms the quantum fixed by the Tribunal. In any event, since, contributory negligence is fixed at 80% : 20% on the Lorry driver and two wheeler rider viz., the deceased R.Manimaran in MCOP.No.957 of 2010, the petitioners in MCOP.No.957 of 2010, who are the Legal Heirs of R.Manimaran, are entitled to 80% of the award amount, that is Rs.7,06,400/-.

12. As stated earlier, since no contributory negligence is fixed on the Petitioner viz., Sivakumar in MCOP.No.4120 of 2011,

the award amount of Rs.2,52,000/- fixed by the Tribunal is confirmed.

13. In the result,

(i) CMA.No.940 of 2017 is Partly allowed.

(ii) CMA.No.941 of 2017 is dismissed.

(iii) The Petitioners/claimants/Respondents 1 to 3 in CMA.No.940 of 2017 [MCOP.No.957 of 2010] are entitled to award amount of Rs.7,06,400/- [Rupees Seven Lakhs six thousand and four hundred only]. The award amount will carry interest at the rate of 7.5% per annum from the date of petition till the date of realisation.

(iv) This court by order dated 22.03.2017 directed the appellant/Insurance company to deposit the entire award amount along with proportionate interest and cost. Therefore, the appellant-Insurance company is entitled to get refund of the excess sum, lying in deposit, after satisfying the order of this court. The Respondents 1 to 3 in CMA.No.940 of 2017/claimants in MCOP.No.957 of 2010 are entitled to the award amount in equal proportion.

(v) In both CMAs, the Petitioner(s)/Claimant(s) are permitted to withdraw the award amount, by filing necessary application before the Tribunal. No costs. Connected MPs closed.

s/d-
Assistant Registrar(CS VI)

True Copy

Sub-Assistant Registrar

nvsri

To

1. The Special Sub Judge No.1,
Motor Accident Claims Tribunal, Chennai.

Copy to

The Section officer
VR Section, High Court, Madras 104.

+1 CC to Mr.Sivakumar, advocate sr 32075.

+2 CCS to Mr. Gopalan Advocate sr 32635, 32636.

+1 CC to Mr.K. Varada Kamaraj, Advocate sr 32480.

C.M.A.Nos.940 and 941 of 2017.

SP(19/06/2018)