

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.08.2018

CORAM:

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.1729 of 2009

Bajaj Allianz General Insurance Co. Ltd.,
No.1/69,
Karuneegar Street,
Nerkundram,
Chennai-107.

...Appellant

Vs

1. Mrs.Saroja
2. Amulraj

...Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Award passed by the Motor Accident Claims Tribunal, Additional District and Sessions Court (Fast Track Court No.3) Poonamallee in M.C.O.P.No.615 of 2005 dated 20.03.2008.

For Appellant : Mr.K.Padmanabhan

For Respondents: Mr.K.Varadha Kamaraj For R1
R2 - Set exparte

JUDGMENT

The instant appeal has been filed challenging the Award dated 20.03.2008 passed by the Motor Accident Claims Tribunal, Additional District and Sessions Court (Fast Track Court No.3) Poonamallee in M.C.O.P.No.615 of 2005.

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

(i) The first respondent who was travelling as a pillion rider in the motor cycle bearing Registration No.TN-22-AJ-0759 insured with the Appellant met with an accident and sustained injuries on 28.04.2005, as a result of rash and negligent driving by the driver of the motor cycle.

(ii) The first respondent preferred a claim before the Motor Accident Claims Tribunal in M.C.O.P.No.615 of 2005 seeking compensation of Rs.6,00,000/- which was restricted to Rs.3,00,000/- against the Appellant and the second respondent is the owner of the two wheeler.

(iii) The Motor Accident Claims Tribunal by its Award dated, 20.03.2008 in M.C.O.P.No.615 of 2005, directed the Appellant to pay the first respondent a sum of Rs.1,48,732/- together with interest at the rate of 7.5%, per annum from the date of the claim till the date of realisation and also awarded costs.

3. Aggrieved by the Award dated 20.03.2008 passed by the Motor Accident Claims Tribunal in M.C.O.P.No.615 of 2005, the instant appeal has been filed by the Insurance Company.

4. Heard, Mr.K.Padmanabhan, learned Counsel for the Appellant and Mr.K.Varadha Kamaraj, learned Counsel for the first respondent.

5. Despite service of notice to the second respondent and his name have been printed in the cause list today, none appears on the side of the second respondent.

6. Learned Counsel for the Appellant submits that the Appellant Insurance Company is not liable to compensate the claim of the first respondent, since the first respondent was only a pillion rider of the vehicle. Further the learned counsel for the Appellant would contend that the vehicle was driven by the son of the first respondent who is the injured person in the accident.

7. Per contra, the learned Counsel for the first respondent would submit that there was a valid insurance for the vehicle with the Appellant at the time of the accident and therefore the first respondent who was a pillion rider and who sustained injuries, as a result of the rash and negligent driving by the driver of the vehicle is entitled to be compensated by the Appellant.

8. This Court after having considered the materials available on record and after examining the impugned award and after hearing the submissions of the respective Counsels observes the following:

(a) It is an undisputed fact, that the first respondent sustained injuries as a result of the rash and negligent driving of the vehicle bearing Registration No.TN-22-AJ-0759, insured with the Appellant by the second respondent.

(b) This Court has perused the counter statement filed by the Appellant before the Tribunal on 01.03.2006. The ground raised by the Appellant in the instant appeal that there is no coverage for a pillion rider under the insurance policy has not been taken as a defence before the Tribunal by the Appellant as seen from the Counter Statement filed on 01.03.2006. The learned Counsel for the Appellant has contended that an Additional Counter Statement was filed and he also drew the attention of this Court to the Additional Counter Statement filed in the year 2007.

9. According to him, the Additional Counter Statement was not considered by the Tribunal, wherein the Appellant has categorically stated that the insurance policy does not cover a pillion rider. When a question was put to the learned Counsel for the Appellant whether any application was filed seeking permission of the Tribunal for filing Additional Counter Statement, the learned Counsel for the Appellant is unable to give firm answer, as to whether such an application was filed. Therefore it has to be presumed that no such additional counter statement was taken on record by the Tribunal. That is the reason, why the Tribunal has not considered the defence raised in the Additional Counter and has not framed any issue on the defence raised by the Appellant in the Additional Counter Statement.

10. The first respondent has sustained spinal cord injuries and suffered 20% disability. The Disability Certificate and the Wound Certificate has also been marked as exhibits before the Tribunal.

11. No Contra evidence has been produced by the Appellant before the Tribunal to disprove the nature of injuries sustained by the first respondent. The tribunal has assessed the notional income of the first respondent at Rs.3,000/- per month and the 1st respondent was an agricultural labourer at the time of the accident.

12. The first respondent was also hospitalized for quite some time and the discharge summary from the hospital was also marked as Ex.P3. The medical bills for the expenses incurred by the first respondent was also marked as Ex.P4.

13. Considering the above observations, this Court is of the view that the compensation awarded under the impugned Award is a just compensation. In the result, there is no merit in the instant appeal.

14. Accordingly the Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected M.P.No.1 of 2009 is closed.

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Assistant Registrar (CS)

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Sub Assistant Registrar

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To

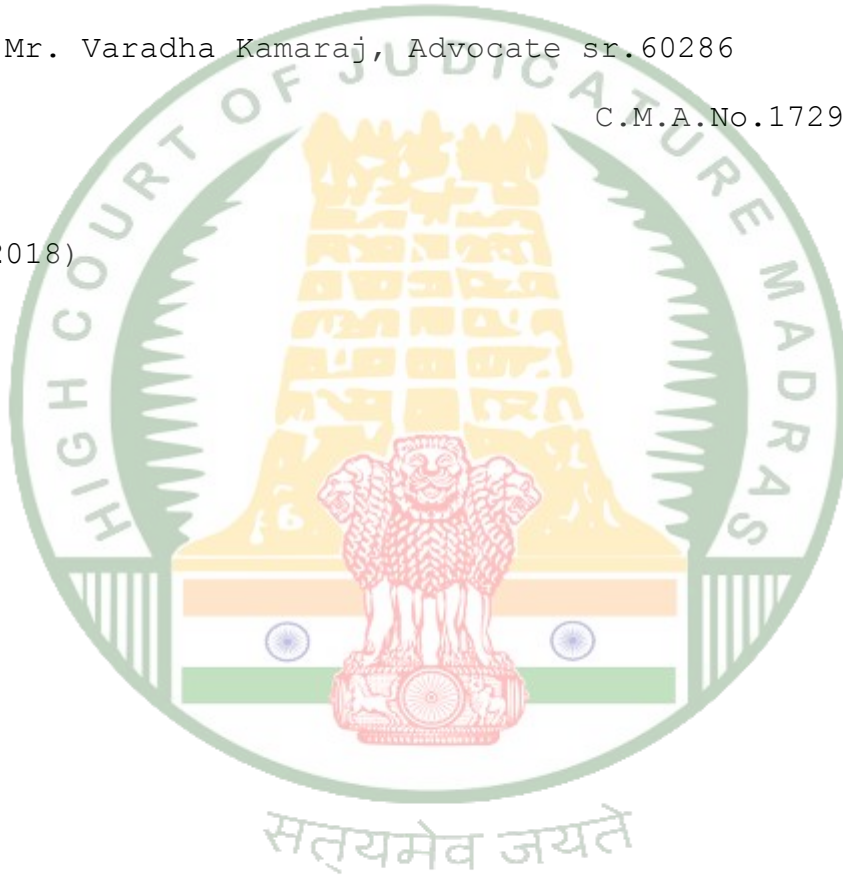
1.Motor Accidents Claims Tribunal,
Additional District and Sessions Court
(Fast Track Court No.3)
Poonamallee.

2.The Record Clerk,
VR Section,
High Court, Madras.

+ 1 cc to Mr. Varadha Kamaraj, Advocate sr.60286

C.M.A.No.1729 of 2009

MG(CO)
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