

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.08.2019

CORAM:

THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

C.M.A.No.2508 of 2015
and
M.P.No.1 of 2015

Bajaj Allianz General Insurance Co. Ltd.,
5th Floor, Prince Towers,
25-26, College Road,
Nungambakkam,
Chennai.

... Appellant /2nd Respondents

Vs.

1.Maragatham

2.M.Senthilkumar

....1st Respondent/Petitioner

3.N.Venukrishnan

4.The United India Insurance Co. Lt.,
Pondicherry. rep by its Divisional Manager,
No.46, Nehru Street,
Pondicherry.

...2 to 4 Respondents/
Respondents 1,3 & 4

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 11.12.2014 made in M.C.O.P.No.315 of 2004 on the file of Motor Accident Claims Tribunal, Additional Sub Court, Pondicherry.

For Appellant : Mr.S.Arunkumar

For R1 : Mr.V.Kamalakumar

For R4 : Mr.P.Sankaranarayanan

for R2 & R3 : No appearance

J U D G M E N T

The Civil Miscellaneous Appeal has been filed by the appellant/Insurance Company, challenging the award dated 11.12.2014 made in M.C.O.P.No.315 of 2004 on the file of Motor Accident Claims Tribunal, Additional Sub Court, Pondicherry.

2.The appellant/Insurance Company is 2nd respondent in M.C.O.P.No.315 of 2004 on the file of Motor Accident Claims Tribunal, Additional Sub Court, Pondicherry. The 1st respondent filed the said claim petition, claiming a sum of Rs.31,00,000/- as compensation for the death of one Vinayagamurugan, who died in the accident that took place on 26.10.2003. The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent riding by the rider of the Enfield Bullet motorcycle belonging to the 2nd respondent and directed the appellant/Insurance Company to pay a sum of Rs.7,68,900/- as compensation to the 1st respondent. Challenging the said award dated 11.12.2014 made in M.C.O.P.No.315 of 2004, granting compensation to the 1st respondent, the appellant/Insurance Company has come out with the present appeal.

3.The learned counsel appearing for the appellant/Insurance Company contended that the Tribunal erred in directing the appellant/Insurance Company to pay the compensation inspite of the fact that involvement of vehicle bearing Reg.No.PY-01-B-6488 is disputed. The Tribunal failed to note that neither in the FIR dated 26.10.2003 nor alteration report dated 03.11.2003, the vehicle insured with the appellant/Insurance Company did not find place and these aspects were not considered by the Tribunal. The Tribunal failed to infer from the hospital records that the accident was caused by the vehicle rode by the foreigners. PW1 has not examined any eyewitness to prove the involvement of the vehicle insured with the appellant/Insurance Company beyond reasonable doubt. The total sum awarded by the Tribunal is excessive and prayed for setting aside the award of the Tribunal.

4.It is argued by the appellant/Insurance Company that FIR registered on 26.10.2003 nor in the subsequent alteration filed on 03.11.2003, the offending vehicle was not mentioned. Neither complainant nor any witness have mentioned the vehicle nor its number. Further, the M.V. Report of the Enfield bullet was prepared on 24.11.2003 i.e. nearly a month after the accident. But the police failed to mention how they manage to identify the vehicle. From the accident register filed in the hospital, it is clearly reveal that the petitioner and two other foreigners were

injured. All the three persons were injured and admitted in the hospital it is evident that only the vehicle driven by the foreigners was at fault and not as stated in the police records relied by the petitioner. From the Motor Vehicles Inspection Report, it is clear that the alleged vehicle was not found in damaged condition and the fact that the owner has not claimed damages for the vehicles with them. Hence it is only the vehicle driven by the foreigners was at fault and not stated in the police records, but it is evident from both the records and the investigation report that the bullet was not involved in the accident.

5.The learned counsel appearing for the 4th respondent/Insurance Company contended that he is not a necessary party and the petition against this respondent has to be dismissed and threshold with compensatory costs. In the claim petition it is stated that the accident was happened only because of the rash and negligent of the R1's driver and there is no averments in the claim petition that the accident has occurred by head on collusion of the motorcycle bearing Reg.No.PY-01-0N-4910 in which the deceased was riding with the 1st respondent's motorcycle bearing Reg.No.PY-01-B-6488. The FIR was registered in Cr.No.415 of 2003 of S.H.O.Kottakuppam Police Station also confirmed the said fact.

6.Heard Mr.S.Arunkumar, learned counsel appearing for the appellant/Insurance Company, Mr.V.Kamalakumar, learned counsel appearing for the 1st respondent and Mr.P.Sankaranarayanan, learned counsel appearing for the 4th respondent and perused all the materials on record.

7.From the materials available on record, it is seen that PW1/Maragatham in her evidence has deposed that driver of the 2nd respondent is responsible for the accident. Ex.P1/FIR registered by the Pondicherry Traffic Police in Cr.No.415/2003 shows that the complaint was given by one Jayabalan and in police complaint also the said Jayabalan was stated that the driver of the 2nd respondent is responsible for the accident. Though the appellant examined RW1 and marked Ex.R1 to Ex.R6. The Tribunal held that the said documents were not proved by any police officials and Motor Vehicles Inspection Report. RW1 also come to the conclusion that the accident occurred only due to rash and negligent driving by the driver of the 2nd respondent vehicle insured with the appellant/Insurance Company. There is no violation of policy condition and the same was proved by Ex.P2/registration certificate of the vehicle belongs to 2nd respondent and Ex.P3/policy copy. Further, the driver of the 2nd respondent was also not examined to speak about the manner of

the accident. Therefore, it is clearly proved that the accident has occurred only due to rash and negligent riding by the rider of the bullet motorcycle belongs to the 2nd respondent and the said motorcycle insured with the appellant/Insurance Company. There is no error in the said finding warranting interference by this Court.

8.As far as quantum of compensation is concerned the 1st respondent has contended that the deceased was working as a foreman-cum-driver in Golden Auto Works, Pondicherry and was earning a sum of Rs.5,300/- per month, apart from that he was also working part time job as driver on hire basis and was earning a sum of Rs.2,000/-. But the 1st respondent has not produced any materials to substantiate that the deceased was working as a part time driver. In the absence of any materials, the Tribunal fixed notional income of the deceased at Rs.5,300/- per month. The deceased was aged 26 years at the time of the accident. The accident is of the year 2003. The Tribunal has not granted any enhancement towards future prospects. In view of the same, this Court is of the view that the amount fixed by the Tribunal as notional income and calculated the loss of dependency is not excessive. Similarly, the sum awarded under the heads are not proper and reasonable. This Court finds no error in the assessment made by the Tribunal to interfere with. Accordingly, the same is confirmed.

9.In the result, this Civil Miscellaneous Appeal is dismissed and the sum of Rs.7,68,900/- awarded by the Tribunal as compensation to the 1st respondent/1st claimant, along with interest and costs is confirmed. No costs. Consequently, connected Miscellaneous Petition is closed.

10.The appellant/Insurance Company is directed to deposit the award amount with interest and costs, less the amount already deposited, if any, within a period six weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P.No.315 of 2004. On such deposit, the 1st respondent/ 1st claimant is permitted to withdraw the award amount, along with interest and costs, after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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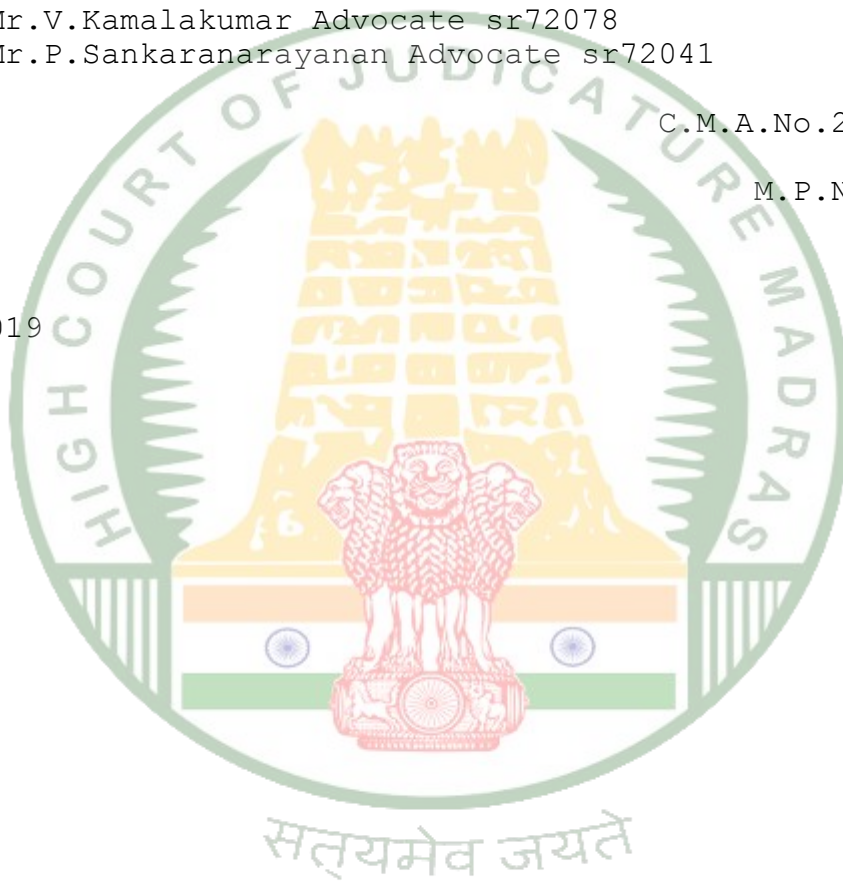
To
1.The Additional Subordinate Judge,
Motor Accident Claims Tribunal,
Pondicherry.

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

+1 cc to M/s.S.Arunkumar Advocate sr72187
+1 cc to Mr.V.Kamalakumar Advocate sr72078
+1 cc to Mr.P.Sankaranarayanan Advocate sr72041

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