

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 25.01.2019

DELIVERED ON: 01.02.2019

C O R A M

THE HONOURABLE MRS.JUSTICE R.HEMALATHA

CMA No.2623 of 2012 and
M.P.No.1 of 2012

M/s Bajaj Allianz General Insurance Company Limited,
Regional Office,
Prince Towers, 4th Floor,
No.25/26, College Road,
Nungambakkam,
Chennai-6. ... Appellant/2nd respondent

Vs.

1. Rajalakshmi
2. Tamilselvi
3. Vettrivel
4. Tamilkodi ... Respondents 1 to 4/ Claimants
5. Abdun Naseer ... 5th respondent/1st respondent

PRAYER: Civil Miscellaneous Petition filed under Section 173 of the Motor Vehicles Act, 1988 against the orders dated 21.03.2012 passed by the Subordinate Judge, Motor Accidents Claims Tribunal, Ariyalur in MCOP No.180 of 2010.

For Appellant : Mr. S. Manohar

For Respondents 1 to 4 : Mr.M.Pari

5th Respondent : No appearance (Ex-parte)

JUDGMENT

The appellant M/s Bajaj Allianz General Insurance Company Limited, Chennai is the 2nd respondent in MCOP No.180 of 2012 on the file of the Subordinate Judge, Motor Accident Claims Tribunal, Ariyalur. The respondents 1 to 4/claimants filed a

claim petition under Section 166 of the Motor Vehicles Act seeking compensation of Rs.6,00,000/- for the death of one Pandiyathurai.

2. The brief case of the claimants is as follows. On 23.05.2010, the deceased Pandiyathurai was riding his bicycle on Thathuvancheri- Kumbakonam main road. At about 8.00 p.m. when he was nearing Thathuvancheri bus stop, a speeding Tata Bolero car bearing registration No. TN- 22-BY-3550, belonging to the fifth respondent herein and insured with the present appellant hit the deceased Pandiyathurai, as a result of which, he sustained injuries all over his body. Immediately, he was rushed to the Government Hospital at Kumbakonam from where, he was referred to the Government Medical College Hospital, Thanjavur. However, he succumbed to injuries on 31.05.2010. According to the claimants, the rash and negligent driving of the driver of the Tata Bolero car bearing registration No. TN-22-BY-3550 belonging to the 5th respondent was the cause of the accident and that since the said vehicle was insured with the present appellant, both of them are jointly and severally liable to pay compensation to them.

3. The first respondent remained absent before the tribunal and therefore, he was set exparte. The present appellant contested the claim petition.

4. The learned Subordinate Judge, Motor Vehicle Accidents Claims Tribunal, Ariyalur, after analysing the evidence on record, awarded a compensation of Rs.5,50,000/- to the claimants. Aggrieved over the orders passed by the tribunal, the insurance company has filed the present appeal under Section 173 of the Motor Vehicles Act.

5. Mr.S.Manohar, learned counsel appearing for the appellant would contend that when the offending vehicle is described as Tata Sumo car in the Accident Register, a copy of which is marked as Ex.R4, the tribunal was wrong in directing the present appellant to pay the compensation amount to the claimants. His specific contention is that since the Tata Sumo Car was not insured on the date of accident, the claimants, with the collusion of the police officials, have indicated the offending vehicle as Tata Bolero car bearing registration No. TN- 22-BY-3550. He would also contend that the tribunal merely based on a copy of the first information report (Ex.P1), had wrongly concluded that the Tata Bolero car bearing registration No.TN-22-BY-3550 was involved in the accident, especially, when in the Accident Register, it is clearly indicated that the offending vehicle is Tata Sumo car and Mr.Natarajan (PW2) who set the criminal law into motion had also deposed that he did not describe the offending vehicle before the police.

6. Per contra, Mr.M.Pari, learned counsel appearing for the respondents 1 to 4 /claimants would contend that in the First Information Report, it is clearly stated that a Tata Bolero car bearing registration No. TN- 22-BY-3550 hit the deceased Pandiyathurai and that merely based on a copy of the Accident Register (Ex.R4), it cannot be held that some other vehicle was involved in the accident.

7. In the instant case, the appellant did not adduce any acceptable evidence to substantiate their contention that the Tata Bolero car belonging to the 5th respondent was not involved in the accident. Though they contended that one Tata Sumo Car is involved, the registration number of the said vehicle is not mentioned by them. The Subordinate Judge, Motor Accident Claims Tribunal, Ariyalur had infact, gone into these aspects in detail and had clearly held that Tata Bolero car bearing registration No. TN- 22-BY-3550 was involved in the accident. All the observations made by the tribunal are unassailable. It is also pertinent to point out that PW2 is a villager and it cannot be expected from him to identify whether the car was Tata Sumo or Tata Bolero.

8. As far as the quantum of compensation is concerned, the tribunal has awarded a sum of Rs.5,50,000/- to the claimants. Mr.S.Manohar, learned counsel appearing for the appellant would contend that when the deceased was aged 65 years, as per the Postmortem report (Ex.P3), the tribunal fixed the age of the deceased as 61 years and also fixed the monthly income of the deceased as Rs.9,000/-, when there is no proof to that effect. In the instant case, though the age of the deceased is mentioned as 65 years in the Postmortem certificate (Ex.P3), the death extract (Ex.P2) states that the age of the deceased was 61 years.

9. The contention of the claimants is that the deceased was an agriculturist and a milk vendor and earning a sum of Rs.9,000/- per month. However, they did not adduce and documentary evidence to substantiate their contention. In the absence of proof of income, notional income of the deceased is fixed as Rs.6,500/- per month. Since the age of the deceased was 61 years on the date of accident, proper multiplier to be adopted in the instant case is 7, as per the decision in Sarala Verma and others Vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 121. Since 4 persons were depending on the income of the deceased, 1/4 th is deducted towards personal expenses of the deceased. Thus, loss of dependency is

calculated as follows.

Calculation for Loss of dependency

Notional income = 6500
1/4th deduction = 1625
= 4875
Proper multiplier = 7
= 4875 x 12 x 7 = Rs.4,09,500/-

In addition to that, as per the decision rendered by the Constitution Bench of the Honourable Supreme Court in National Insurance Company Limited Vs. Pranay Sethi and others reported in 2017 (2) TNMAC 601, the claimants are entitled to Rs.40,000/- Rs.15,000, Rs.15,000/- and Rs.40,000/- towards "Love and affection, "Loss of Estate" and "Funeral Expenses" respectively. Thus, the claimants are entitled to a total compensation of Rs.4,79,500/- (4.09,500 + 40,000 + 15000 + 15000= 4,26,400) which is extracted here under.

Sl.No	Heads	Amount
1	Loss of dependency (4875x12x7)	4,09,500
2	Love and affection	40,000
3	Loss of Estate	15,000
4	Funeral Expenses	15,000
	Total	4,79,500

This amount shall carry interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit.

10. In the result,

i) The appeal is allowed in part. No costs. The connected miscellaneous petition is closed.

ii) The compensation awarded by the tribunal is scaled down to 4,79,500/- from Rs.5,50,000/-

iii) The appellant/insurance company is directed to deposit the compensation of Rs.4,79,500/- along with interest at the rate of 7.5% per annum, less the amount already deposited by them, within a period of 4 weeks from the date of receipt of a copy of this order.

iv) On such deposit being made by the insurance company, the claimants are entitled to withdraw the same, as per the apportionment made by the tribunal, after following due process of law.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

mst

To

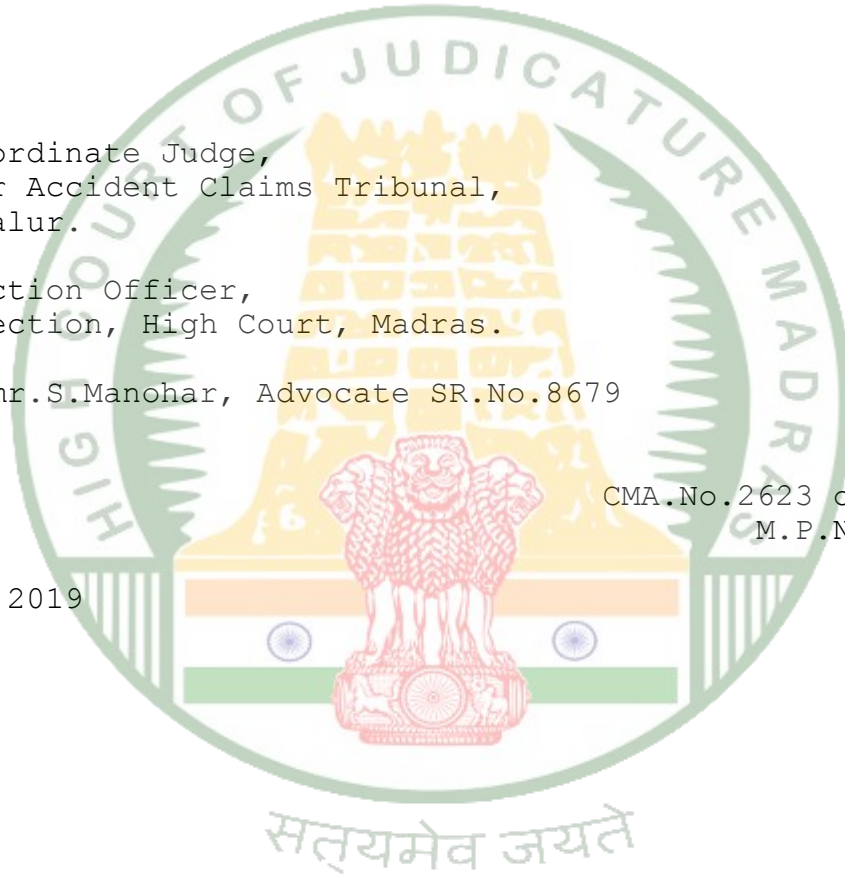
1.The Subordinate Judge,
Motor Accident Claims Tribunal,
Ariyalur.

2. The Section Officer,
V.R.Section, High Court, Madras.

+1 cc to mr.S.Manohar, Advocate SR.No.8679

CMA.No.2623 of 2012 and
M.P.No.1 of 2012

NRL (CO)
CSL/02.04.2019



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