

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.12.2019

CORAM

THE HONOURABLE MR. JUSTICE M.M. SUNDRESH
AND
THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

C.M.A.No. 1339 of 2018

M/s.Bajaj Allianz General Insurance Company Limited,
No.192, Ground Floor,
Karumuthu Nilayam,
Anna Salai, Chennai - 600 002. Appellant/4th Respondent

Vs.

1.Amutha Devi
2.Manjubashini
3.Namitha
4.Chandrasekar
... Respondents 1 to 3/Petitioners

5.M/s.National Insurance Company Limited,
No.F-45, Jawaharlal Nehru Salai,
Vattam - 25, Neyveli - 3.

6.Rayappan
7.Rajesh Kumar
... Respondents 4 to 7/Respondents 1,2,3 & 5

PRAYER : Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree made in M.C.O.P.No.25 of 2012, dated 29.08.2017 on the file of the Motor Accident Claims Tribunal, Subordinate Court, Neyveli.

For Appellant : Mr.N.Vijayaraghavan

For Respondents : Mr.R.Venkataramana Ramalingam
for R1 to R3 (Caveators)

: Mr.P.Sankaranarayanan for R5

: R4, R6 - left
: R7 - no such address

JUDGMENT
(Delivered by M.M.SUNDRESH., J)

The appellant is the insurer of the vehicle bearing Registration No.TN-31-BZ-4199 which is a Maruti Omni Van. The deceased was the pillion rider in the motorcycle bearing Registration No.TN-31-BZ-0877 driven by one Chandrasekar, who is the friend of the deceased. The two-wheeler driven by the said Chandrasekar hit against the vehicle insured with the appellant. Due to the impact, the pillion rider, namely, the deceased sustained grievous injuries. He was taken to the hospital by the rider of the two-wheeler Chandrasekar and after treatment, he died. The claimants are the wife and the children of the deceased.

2. The Tribunal while fixing the liability on the owner of the Maruti Van which has been transferred upon the appellant has proceeded to fix the quantum of compensation at Rs.30,44,572/-. Challenging the same, on the question of liability and quantum, the present appeal is filed.

3. The learned counsel appearing for the appellant submitted that admittedly the complaint given by Chandrasekar, who was driving the two-wheeler, was closed as mistake of fact. The Tribunal, committed an error in not agreeing with the final report while there is no relevant material to support the above said person. The evidence of P.W.2 itself is to the effect that the van was ahead of the two-wheeler. Admittedly, the accident occurred when the two-wheeler hit the Maruthi van from behind. The quantum fixed is also on the higher side. Therefore, the appeal will have to be allowed.

4. The learned counsel appearing for the fifth respondent, who is the insurer of the two-wheeler submitted that the Tribunal took into consideration the evidence of P.W.2. The Tribunal has also found that there was damage to the van. The damage to the two-wheeler was on the right hand side and, therefore, inference has been rightly drawn by the Tribunal.

5. The learned counsel appearing for claimants 1 to 3/respondents 1 to 3 submitted that the methodology adopted by the Tribunal in fixing the quantum is not correct and, therefore, sufficient enhancement will have to be given.

6. On the question of negligence, we do find considerable force in the submission made by the learned counsel appearing for the appellant. Admittedly, the two-wheeler dashed on the Maruthi van insured with the appellant from behind. The complaint given by the Chandrasekar was closed as mistake of

fact. The Tribunal was not right in saying that the closure report has not been served on the aforesaid person and, therefore, no reliance has been made. There is no dispute on fact that the complaint was closed. Secondly, the aforesaid person, for the reasons known, has not been examined. P.W.2 has stated that the deceased was proceeding in front of his vehicle and on back side of the Maruthi van. Therefore, fixing the liability in entirety on the appellant being the insurer of the van cannot be sustained. It is a case of composite negligence. In such view of the matter, we are inclined to fix the liability at 60% on the appellant while fixing 40% on the fifth respondent/insurer of the two-wheeler.

7. Coming to the question of quantum, the deceased was aged about 48 years at the relevant point of time. Therefore, we do not find any reason to interfere with the compensation fixed by the Tribunal at Rs.30,44,572/-.

8. After all, we are concerned with the just compensation payable. In such view of the matter, though we find that the method in which the quantum has been arrived may not be correct, the total amount fixed is just and reasonable and, therefore, we are not in a position either to enhance or reduce the compensation.

9. In the result, the Civil Miscellaneous Appeal stands allowed by apportioning the liability on the appellant and the fifth respondent at 60% and 40% respectively. No costs. Consequently, connected C.M.P.No.10740 of 2018 is closed.

10. The appellant and the fifth respondent are directed to deposit the compensation awarded by the Tribunal along with proportionate interest in the ratio aforesaid, less the amount if any already deposited, to the credit of M.C.O.P.No.25 of 2012 on the file of the Motor Accident Claims Tribunal (Subordinate Court), Neyveli within a period of eight weeks from the date of receipt of a copy of this judgment.

11. We also direct the Tribunal to transfer the amount deposited by way of RTGS to the bank accounts of the claimants within a period of three weeks from the date of deposit of the award amount. On such transfer, the claimants are entitled to withdraw the same.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

To

1.M/s.National Insurance Company Limited,
No.F-45, Jawaharlal Nehru Salai,
Vattam - 25, Neyveli - 3.

2.The Motor Accidents Claims Tribunal,
Sub Court, Neyveli.

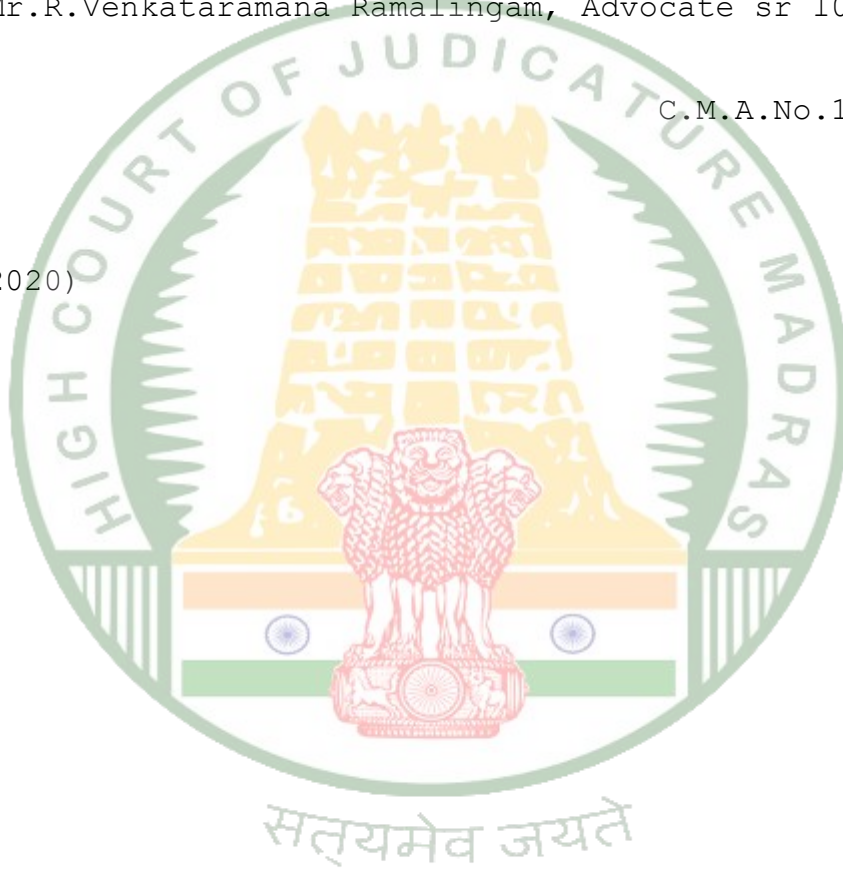
+1 CC to Mr.M.B. Gopalan And Associates sr 102987

+1 CC to Mr.P.Sankaranarayanan, Advocate sr 102868

+1 CC to Mr.R.Venkataramana Ramalingam, Advocate sr 103051.

C.M.A.No.1339 of 2018

PPA (CO)
SP(19/08/2020)



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