

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.02.2020

CORAM:

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.1303 of 2012

and

M.P.No.1 of 2012

Bajaj Allianz Insurance Company Ltd.,
Door No.11 (Office No.6A), People's Park
3rd Floor, Government Arts College,
Coimbatore 641 018. ... Appellant / Respondent 2

Vs.

1. Saravanabhava

2. Nagaraj

3. Saraswathy

4. The Oriental Insurance Company Limited,
No.281, Cross cut Road, Gandhipuram
Coimbatore.

... Respondents/Petitioner &
Respondent 1,3 & 4

(the respondent 2 to 4 are not
necessary parties to the appeal
and therefore, the respondents
2 to 4 are hereby given up. Hence
summary to respondents 2 to 4 not
necessary)

Prayer: This petition is filed Under Section 173 of Motor
Vehicles Act 1988 to set aside the decree and Judgment dated 28th
day of June 2011, made in M.C.O.P.No.1326 of 2007, on the file
of Motor Accident Claims Tribunal and Fast Track Court No.2
Coimbatore.

For Appellant	:Mr.J. Michael Visuvasam
For Respondent - 1	:Mr.Ma.Pa.Thangavel
For Respondent - 4	:Mr.S.K.Krishnamoorthy

JUDGMENT

This petition has been filed by the appellant/Insurance Company against the decree and Judgment dated 28.06.2011 made in M.C.O.P.No.1326 of 2007 on the file of Motor Accident Claims Tribunal and Fast Track Court No.2 Coimbatore.

2.The necessary relevant facts are stated hereunder to find out whether the appellant is entitled for relief as prayed in this appeal.

3.The case of the claimant/first respondent is that on 08.08.2007 at about 7 a.m while he was riding his motor cycle bearing Registration No.TN-38-AH-4105 on the Mettupalayam to Coimbatore main road, a mini auto bearing Registration No.TN-38-T-4208 came in the opposite direction in a rash and negligent manner and dashed him. As a result of which he sustained head injury and grievous injuries all over the body. Hence, he filed a claim petition before the Tribunal seeking Rs.5,45,000/- as compensation for the injuries sustained in the accident. The accident occurred due to the rash and negligent driving of the driver of the mini auto.

4.On the other hand by filing counter, the appellant/Insurance Company has stated that there is no coverage of policy for compensating the

injured/insured for an accident by his own vehicle. It has been further stated in the counter that as per section 134 (c) of Motor vehicles Act 1988 it is a mandatory duty of the insured herein to furnish the particulars of policy, date, time and the place of the accident, but, the insured has not submitted the same.

5.Before the Tribunal on the side of the appellant 2 witness was examined as P.W.1 and P.W.2 and documents Ex.P.1 to Ex.P.6 were adduced. On the side of the respondents, three witness were examined as R.W.1 to R.W.3 and documents Ex.R.1 to R4 were adduced. On the basis of evidence available on record, the Tribunal concluded that the negligence was on the part of the rider of the is the two wheeler and awarded a sum of Rs.90,000/- as compensation to the claimant.

7.The learned counsel for the appellant/Insurance contended that the liability fasted against them is improper as the policy taken by the insured covers only the third party risk and the insured/injured has no right to claim compensation under the policy coverage taken by him. Hence, prays to allows this appeal.

8.Per Contra the learned counsel for the first respondent/claimant submitted that the policy covers the injured person whis the insurer and he has also paid premium to that effect, which was also reflected in Ex.R.W.2/Copy of the Insurance policy. He further contended that the Tribunal has rightly fastened against the Insurer of the two wheeler which is perfectly valid in the eye of law.

9.On a perusal of the award passed by the Tribunal, with regard to negligence aspect, the learned Judge before the Tribunal observed the fact that with regard to the accident a case has been registered in crime no.635 of 2007 under sections 279 and 337 in Kilkudiyalur police station and the injured also paid the fine. Hence the Tribunal concluded that negligence exists on the part of the rider of the two wheeler.

10. Moreover the insurance policy of two wheeler covers the risk of the owner cum rider and it does not cover only to the third party, as stated by the Insurance Company and the said policy was exists at the time of accident. Hence the learned Judge before the Tribunal has fastened the liability against the Insurer of the two wheeler, which is perfectly valid in the eye of law and does not warrant interference by this Court and the same are confirmed as such.

11.With regard to quantum, Ex.P.5/discharge summary shows that the injured was taken as inpatient in Sri Ramakrishna Hospital from 08.08.2007

to 11.08.2007, hence Rs.2,500/- each was awarded towards Transportation and Extra nourishment. In the claim petition it has been stated that the injured worked as a telephone operator in Texmo Motor Division and thereby he was earning Rs.5,600/- per month. Hence Rs.15,000/- was awarded towards loss of income. Due to injuries he has lost his earning capacity hence Rs.30,000/- towards loss of earning capacity. Considering the nature of injuries Rs.15,000 and Rs.25,000/- was awarded towards Mental Agony(Pain and sufferings) and Injuries. Thus, awarded Rs.90,000/- as total compensation. This Court is of the view the finding rendered by the Tribunal is persuasive and cannot be brushed aside easily and the same is confirmed as such.

12.In the result this appeal is dismissed and the appellant/Insurance Company is directed to deposit the award passed by the Tribunal with 7.5% p.a from the date of petition till the date of realization, less the amount already deposited if any, within a period of 8 weeks from the date of receipt of a copy of this Judgment. After making such deposit the claimant/ first respondent is permitted to withdraw the amount, by making

proper application before the Tribunal. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

smn

To

1.The Fast Track Court No.2 Coimbatore

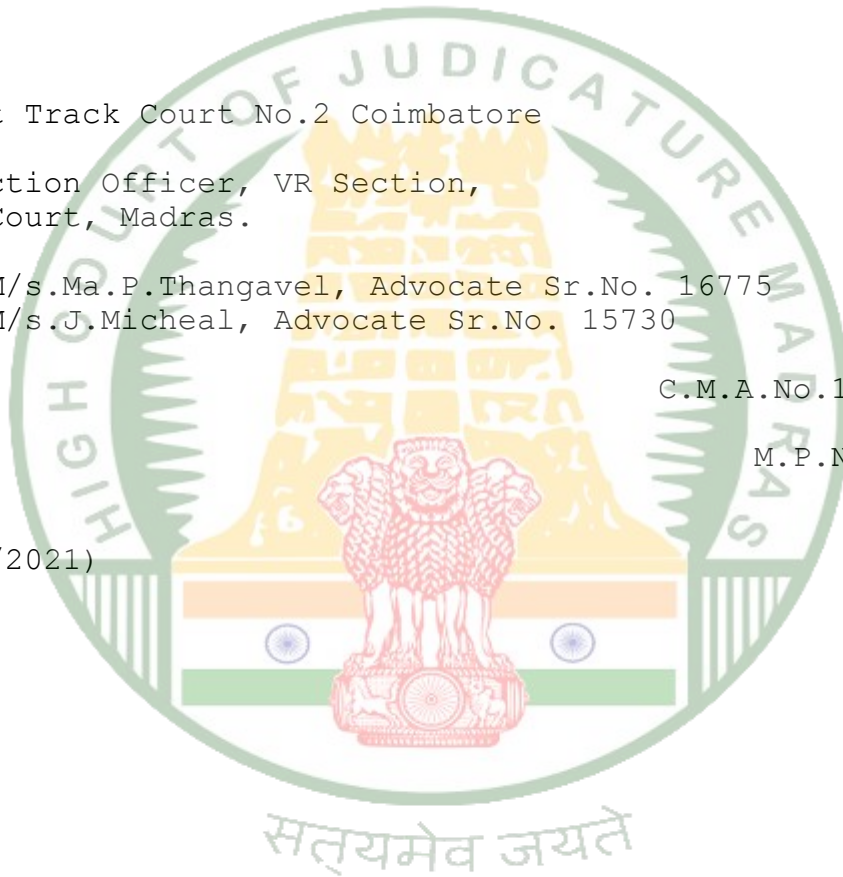
2. The Section Officer, VR Section,
High Court, Madras.

+1 cc to M/s.Ma.P.Thangavel, Advocate Sr.No. 16775

+1 cc to M/s.J.Micheal, Advocate Sr.No. 15730

C.M.A.No.1303 of 2012
and
M.P.No.1 of 2012

SR(CO)
RMP(21/01/2021)



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