

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.02.2020

C O R A M

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.2383 of 2011

M/s. Bajaj Allianz General
Insurance Co. Ltd

No.11, Peoples Park, 3rd Floor,
Government Arts College Road,
Coimbatore- 641 018.

...Appellant/2nd Respondent

Versus

1.Rumana W/o. Late Mubarak Basha

2.Minor Sayaba, S/o. Late Mubarak Basha

3.Minor Dayaba S/o.Late Mubarak Basha
(Minors rep by Mother 1st Respondent)

4.Sherunnisha W/o. Anvar Basha

5. Jayamani D/o. Munirathinam
(5th Respondent exparte in Lower Court
and hence notice may be dispensed with)

...Respondents/Petitioners 1 to 4/1st Respondent

Prayer: Civil Miscellaneous Appeal filed against the order and
decree dated 15.10.2009 made in M.C.O.P.No.636 of 2008 on the
file of the Motor Accident Claims Tribunal, Principal District
Court, Dharmapuri.

For Appellant : Mr.E. Rajadurai

For Respondents-1 to 4 : Mr.M. Selvam

R5 - Ex-parte

J U D G M E N T

The Insurance Company has filed this appeal against the
Award and Decree made in M.C.O.P. No.636 of 2008 dated
15.10.2009 on the file of the Motor Accident Claims Tribunal,
Principal District Court, Dharmapuri questioning the liability
on it.

2. The Facts of the case briefly are as follows:

On 02.08.2005, the deceased Mubarak Basha was working as cleaner-cum-load man in Mini door Auto bearing registration No.TN.29-H-4959. He used to load goats from Pennagaram weekly santhai to Dharmapuri. On that day, the driver drove the aforesaid vehicle, when the vehicle was proceeding nearby the occurrence place, at about 12.30.p.m, in a rash and negligent manner and it was overturned due to lost of his control. As a result,, Mubarak Basha sustained fatal injuries and died in the hospital even treatment was given to him. Due to the fatal accident, the legal heirs of the deceased filed claim petition in M.C.O.P. No.636 of 2008 on the file of the Motor Accident Claiming Tribunal, Principal District Court, Dharmapuri, for Rs.5,00,000/- (Rupees Five Lakhs Only) as compensation. After trial, the claimants were awarded a sum of Rs.4,62,000/- (Rupees Four Lakhs Sixty Two Thousand Only) as compensation.

3. Being aggrieved by the award passed by the Tribunal, the appellant/Insurance Company has filed the appeal questioning the liability on its side.

4. The learned counsel for the appellant would submit that the Tribunal has come to the conclusion that the deceased was travelling as a cleaner cum load man. Hence the Insurance company is liable to pay the compensation without considering the deceased was merely a passenger travelling in the offending vehicle who was neither authorized to travel in the offending vehicle nor covered under the policy. Further, it is submitted that the Charge sheet Ex.P5 clearly states that the deceased was not stated as cleaner of the offending vehicle and he was travelling as one of the passenger among others. All of them suffered different injuries in the accident. Hence, the Insurance Company has no liability to pay compensation to the appellants herein and seeks to set aside the award passed by the Tribunal.

5.Per contra, the learned counsel for the respondents 1 to 4 would submit that the Tribunal has awarded compensation after corroborating the deceased was working as cleaner in the offending vehicle being considered the entire oral and documentary evidence. Hence, the appeal filed by the Insurance company is unsustainable and liable to be quashed.

6. Heard both side and perused the available materials on records.

7. The factum of the accident and the manner of the accident has to be rash and negligence driving of the driver/5th respondent herein of the offending vehicle under Section 163A is not in dispute. The entitlement of claimants as the deceased was working as a cleaner cum load man, is alone disputed.

8. During the trial, the P.W.1 & P.W.2 were examined and Ex.P1 to Ex.P8 were marked on behalf of the Claimants. On the part of the Insurance Company, R.W.1 was examined and Ex.R1 to Ex.R5 were marked.

9. On perusal of the award passed by the Tribunal, during the time of the trial, the Tribunal has confirmed that the deceased was working as cleaner cum load man after considering the oral evidence of P.W1 and P.W.2. During the cross examination on them, they have clearly deposed that the deceased was working as cleaner in 5th respondent's vehicle driver. Further, P.W.2 has deposed that at the time of the accident, the deceased and driver of the auto were sitting in the cabin of the offending vehicle and the deceased was received the amount from P.W.2 and handed over to the 5th respondent herein who was the driver of the offending vehicle. It is right to mention that the offending vehicle used to come regularly from Pennagaram to Dharmapuri. After relying on the evidence of P.W.1 and P.W.2, the Tribunal has established the findings that during the time of the accident, the deceased was working as a cleaner and doing load man work in the offending vehicle.

10. In view of the aforesaid observation and having considered the facts and circumstances of the case, this Court confirms the findings of the Tribunal beyond any reasonable doubt. Hence, the learned counsel for the appellant's contention is not sustainable and the appeal is liable to set aside.

11. The Insurance company is directed to deposit the award amount passed by the Tribunal within a period of four weeks from the date of receipt of copy of this order. The Claimants/respondents 1 to 4 herein are entitled for the compensation as per the proportionate passed by the Tribunal.

12. In the result, the appeal is dismissed. Accordingly, the impugned award passed by the Tribunal is confirmed. There shall be no order as to costs.

s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

lbm

To:

1.The Motor Accident Claims Tribunal,
Principal District Court, Dharmapuri

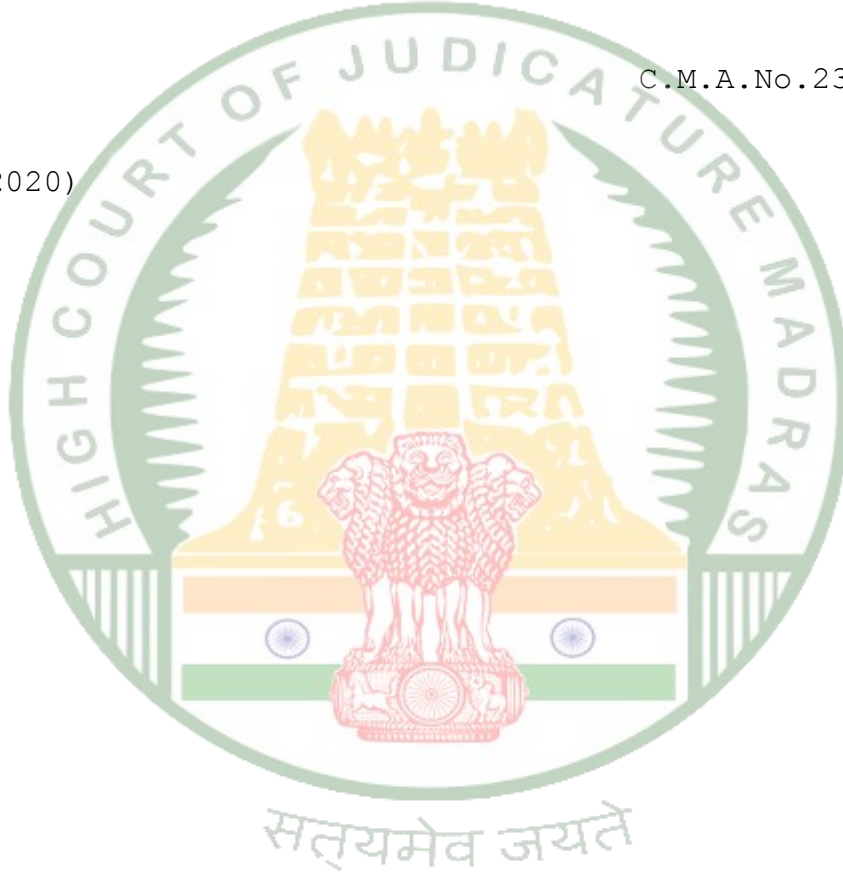
2.The Section Officer,
V.R.Section, High Court, Madras.

+1 CC to Mr.M.B. Gopalan, Advocate sr 9151

+1 CC to Mr.M.Selvam, Advocate sr 8235.

C.M.A.No.2383 of 2011

SR(CO)
SP(21/12/2020)



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