

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:29.09.2020

Coram:

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

C.M.A.No.1544 of 2016

and

C.M.P.No.11724 of 2016

Bajaj Allianz General Insurance Co.Ltd.,
No.30, FNG First East Main Road,
Gandhi Nagar,
Vellore 632 006. ... Appellant /2nd Respondent

/versus/

C.Munusamy (Died)

1.Malarkodi

2.S.Jayapriya

3.S.Revathi

4.M.Sankar

.... Respondents /Claimants

5.P.Selvarasu

... Respondent/1st Respondent

Prayer: Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988 the award and decree dated 08.07.2013 made in M.C.O.P.No.220 of 2006 on the file of the Motor Accidents Claims Tribunal, Sub Court, Ranipet.

For Appellant :Mr.S.Arunkumar

For Respondents :Mr.M.Sivakumar for

R1 to R5 (R-5, Petitioner in CMA.No.1545/2016)

J U D G M E N T

(The case has been heard through Video conference)

This appeal is arising out of the accident, which occurred on 11.09.2006, when the deceased Siva @ Sivakumar on the pillion was travelling in a Hero Honda Splander bearing Reg.No.TN 25 V 7429 driven by Selvarasu, an unknown heavy vehicle came in the opposite direction from Arni and dashed against the two wheeler causing the death of pillion rider and grievous injury to the rider of the two wheeler. The injured rider preferred a claim petition in M.C.O.P.No.10 of 2007 and the legal heirs of the deceased pillion rider preferred a claim petition in M.C.O.P.No.220 of 2006 on the file of the Motor Accident Claims Tribunal, Sub Court, Ranipet under Section 166 of the Motor

Vehicles Act, 1988.

2.The Insurance Company filed separate counters in the claim petitions. In the petition filed by the rider of the two wheeler Selvarasu, they contended that the rider of the two wheeler was holding only LLR and he had no valid driving license at the time of accident. Further, the insurance for motor cycle bearing Reg.No.TN 25 V 7420 which was driven by the insured Selvarasu, covers only (i) third party cover and (ii) personal accident cover for owner-cum-driver. The third party liability risk in the package policy and liability policy are one and the same. Section 147 of the Motor Vehicles Act, 1988 does not envisage covering the risks of owner-cum-driver who is the tortfeasor.

3.The Tribunal, after considering the said defence negatived the defence and awarded a sum of Rs.4,93,000/- as compensation. Aggrieved by the said award passed by the Tribunal, the Insurance Company has preferred this appeal in C.M.A.No.1544 of 2016.

4.When the matter was taken up for arguments, the learned counsel appearing for the Insurance Company would submit that being a package policy and the deceased was a pillion rider, he is not pressing the appeal and sought leave to withdraw the appeal and confirm the award passed by the Tribunal.

5.The learned counsel appearing for the respondents 1 to 5 sought permission to withdraw the award amount deposited in the tribunal.

6.Recording the submissions made by the Insurance company/appellant, this Civil Miscellaneous Appeal is dismissed as withdrawn. No costs. The respondents/claimants are permitted to withdraw the award amount lying in the account of M.C.O.P.No.220 of 2006. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-VI)

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Sub Assistant Registrar

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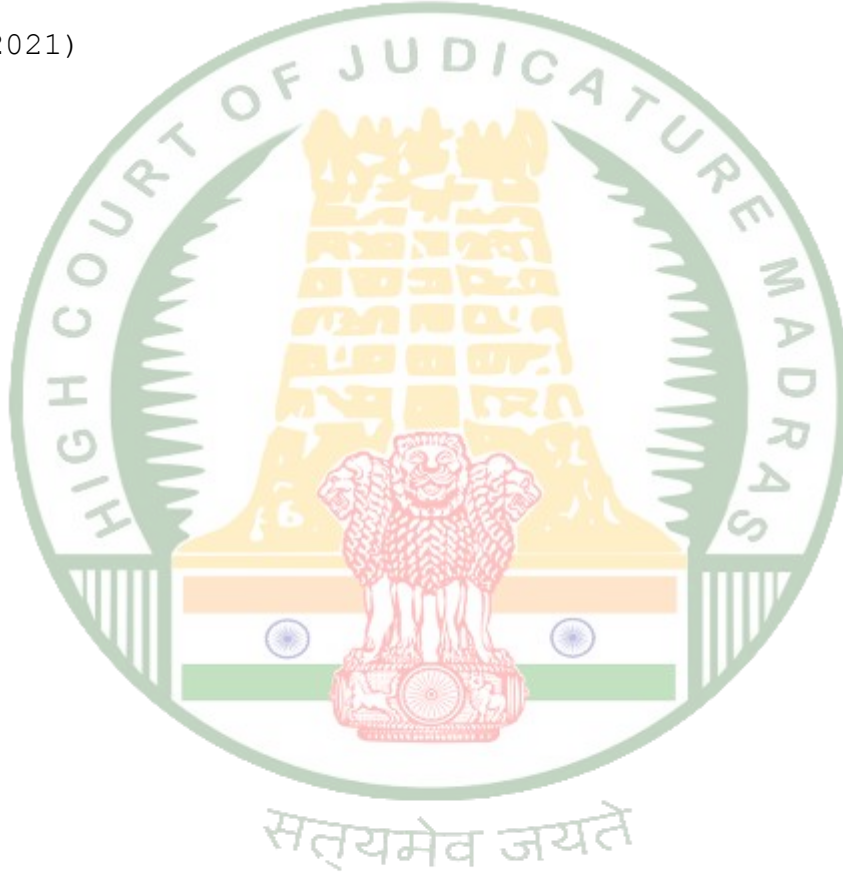
To

The Motor Accident Claims Tribunal,
Subordinate Court, Ranipet.

+1cc to Mr.C.Prabakaran, Advocate, S.R.No. 32047

C.M.A.No.1544 of 2016
and
C.M.P.No.11724 of 2016

RSV(CO)
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