

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.01.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.Nos.1756 & 1757 of 2018 and
C.M.P.Nos.13596 & 13597 of 2018, 24656 & 24657 of 2019

M/s.Bajaj Allianz General Insurance Company Limited.,
No.25/26, Prince Towers,
IV Floor, College Road,
Nungambakkam,
Chennai-600 034.

.. Appellant in both Appeals

Vs.

1.K.Iyyappan .. First Respondent in C.M.A.No.1756 of 2018

1.K.Narayanan .. First Respondent in C.M.A.No.1757 of 2018

2.The Nagaa HI Tech Heavy
Engineering Pvt.Ltd.,
No.8, Nehru Nagar,
Old Mahabalipuram Road,
Kottivakkam, Chennai.

.. Second Respondent in both Appeals

Common Prayer: These Civil Miscellaneous Appeals are filed under
Section 173 of Motor Vehicles Act, 1988, against the common
Judgment and Decree dated 19.12.2017 made in M.C.O.P.Nos.2877
and 2878 of 2013 on the file of Motor Accidents Claims Tribunal,
II Additional Subordinate Court, Cuddalore.

In both the Appeals

For Appellant : Mrs.C.Harini

For R1 : Mr.Udayakumar

For R2 : Mr.S.Gowri K.Sundar
for Mr.N.Murali

C O M M O N J U D G M E N T

These Civil Miscellaneous Appeals have been filed against the common award dated 19.12.2017 made in M.C.O.P.Nos.2877 and 2878 of 2013 on the file of Motor Accidents Claims Tribunal, II Additional Subordinate Court, Cuddalore.

2.Both the appeals arise out of the same accident and common award and hence, they are disposed of by this common judgment.

3.The appellant/Insurance Company is the second respondent in M.C.O.P.Nos.2877 and 2878 of 2013 on the file of Motor Accidents Claims Tribunal, II Additional Subordinate Court, Cuddalore. The first respondent in both the appeals filed the above said claim petitions claiming a sum of Rs.10,00,000/- and Rs.50,000/- respectively as compensation for the injuries sustained by them in the accident that took place on 19.02.2013.

4.According to the 1st respondent(s)/claimants, on 19.02.2013 at about 6.00 p.m. when the 1st respondent in M.C.O.P.No.2877 of 2013 who is the rider of the Hero Honda passion motor cycle bearing Regn.No.PY-01-AL-2709 and the 1st respondent in M.C.O.P.No.2878 of 2013 being the pillion rider were proceeding in the motorcycle, near Janakipuram Government Employees Quarters on the Villupuram to Tiruchi Highway at moderate speed keeping extreme left of Trichy Road, the 2nd respondent's LMV car bearing Regn.No.TN-07-BE-7053 came from behind at a great speed in a rash and negligent manner and hit the divider and then dashed against the 1st respondent's motorcycle. Due to the impact, the 1st respondent in both appeals sustained multiple grievous injuries, took treatment as in-patients. Due to the injuries, they could not do the work as they were doing earlier. They spent huge amount for medical expenses. Hence, they filed the above claim petitions seeking compensation.

5.The appellant/Insurance Company filed counter statement denying all the averments made by the claimants. The 2nd respondent/owner of the car has violated the policy conditions by driving a LMV car without valid insurance and driving licence. The accident had happened due to the negligent riding by the rider of the motorcycle i.e. 1st respondent in C.M.A.No.1756 of 2018. The appellant further contended that the 1st respondent(s)/claimants have to prove their age, occupation and income. The amount claimed by the claimants are excessive and prayed for dismissal of the claim petitions.

6.Before the Tribunal, on the side of the 1st respondents, the 1st respondent in both the appeals examined themselves as P.W.1 & P.W.2, and marked 12 documents as Exs.P1 to P12. On the side of the appellant, R.W.1 was examined and final report was marked as Ex.R1. Disability certificate was marked as Ex.C1.

7.The Tribunal considering the pleadings, oral and documentary evidence held that the accident occurred only due to rash and negligent driving by the driver of the LMV Car belonging to the second respondent and directed the appellant/Insurance Company being the insurer of the vehicle to pay a sum of Rs.6,61,700/- in M.C.O.P.No.2877 of 2013 and Rs.25,000/- in M.C.O.P.No.2878 of 2013 respectively as compensation to the first respondent/claimant in both the appeals.

8.Against the said award dated 19.12.2017 made in M.C.O.P.Nos.2877 and 2878 of 2013, the appellant/Insurance Company has come out with the present appeals.

9.The learned counsel appearing for the appellant-Insurance Company contended that the Tribunal failed to see that the accident had occurred solely due to negligence on the part of the rider of the motorcycle, namely the first respondent in C.M.A.No.1756 of 2018 who suddenly took U-turn without any signal. Due to the sudden and rash U-turn attempted by the rider of the motorcycle, the driver of the car did not have time to avoid the accident. The Tribunal failed to consider the evidence of R.W.1/Sub-Inspector of Police examined on behalf of the appellant/Insurance Company while fixing the negligence. The amounts awarded by the Tribunal are excessive and prayed for setting aside the award passed by the Tribunal.

10.Heard the learned counsel appearing for the appellant/Insurance Company as well as the learned counsel appearing for respondents 1 and 2 and perused all the materials available on record.

11.It is the case of the first respondent in both appeals, that the driver of the car drove the same in a rash and negligent manner and dashed against the motorcycle and caused the accident. On the other hand, it is the contention of the appellant/Insurance Company that the accident had occurred only due to rash and negligent driving on the part of the rider of the motorcycle/the first respondent in C.M.A.No.1756 of 2018. F.I.R was registered and charge sheet was filed only against the rider of the motorcycle in C.M.A.No.1756 of 2018. To substantiate their contention, the appellant/Insurance Company

examined the Sub-Inspector of Police as R.W.1. The Tribunal considered the evidence of R.W.1 and had extracted the relevant portion of the evidence in the record. From the evidence of R.W.1 extracted in the award it is seen that the Criminal Case filed against the first respondent in C.M.A.No.1756 of 2018 was dismissed. On the other hand, the first respondent in both the appeals have examined themselves as P.Ws.1 and 2 and deposed that the accident had occurred only due to rash and negligent driving by the driver of the car. The appellant has not examined the driver of the car or any eyewitness contrary to the evidence let in by the first respondent in both the appeals as P.W.1 and P.W.2. The Tribunal considering the above materials has rejected the contention of the appellant that the accident had occurred only due to rash and negligent riding of the rider of the motorcycle, the first respondent in C.M.A.No.1756 of 2018. There is no error in the finding of the Tribunal.

12.As far as quantum of compensation in C.M.A.No.1756 of 2018 is concerned, the 1st respondent has suffered multiple fractures and grievous injuries and has filed Ex.P11 - differently abled certificate issued by the District Differently Abled Welfare Officer. In Ex.P11, the disability suffered by the 1st respondent is mentioned as 65%. The 1st respondent was referred to the Medical Board and the Medical Board has certified that the first respondent has suffered 30% disability and issued Ex.C1/disability certificate. The Tribunal after considering Ex.C1 issued by the Medical Board, adopted the multiplier method and granted compensation for 30% disability. There is no perversity in the award of the Tribunal warranting interference by this Court.

13.As far as the quantum of compensation in in C.M.A.No.1757 of 2018 is concerned, the Tribunal held that though injuries suffered by the 1st respondent, are simple in nature, considering the period of treatment taken as inpatient in Government Hospital, Mundiampakkam and the pain suffered by the 1st respondent, awarded a consolidated sum of Rs.25,000/- to the 1st respondent. There is no error in the said award of the Tribunal, warranting interference by this Court.

14.In the result, these Civil Miscellaneous Appeals are dismissed and the award passed by the Tribunal is hereby confirmed. The Appellant-Insurance Company is directed to deposit the award amount in both the appeals along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this common judgment. On such deposit, the first respondent in both the appeals are permitted to withdraw their respective award

amount with interest and costs, after adjusting the amount already withdrawn, if any, by making necessary applications before the Tribunal. No costs. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

gbi

To

1.The II Additional Subordinate Judge,
Motor Accidents Claims Tribunal, Cuddalore.

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

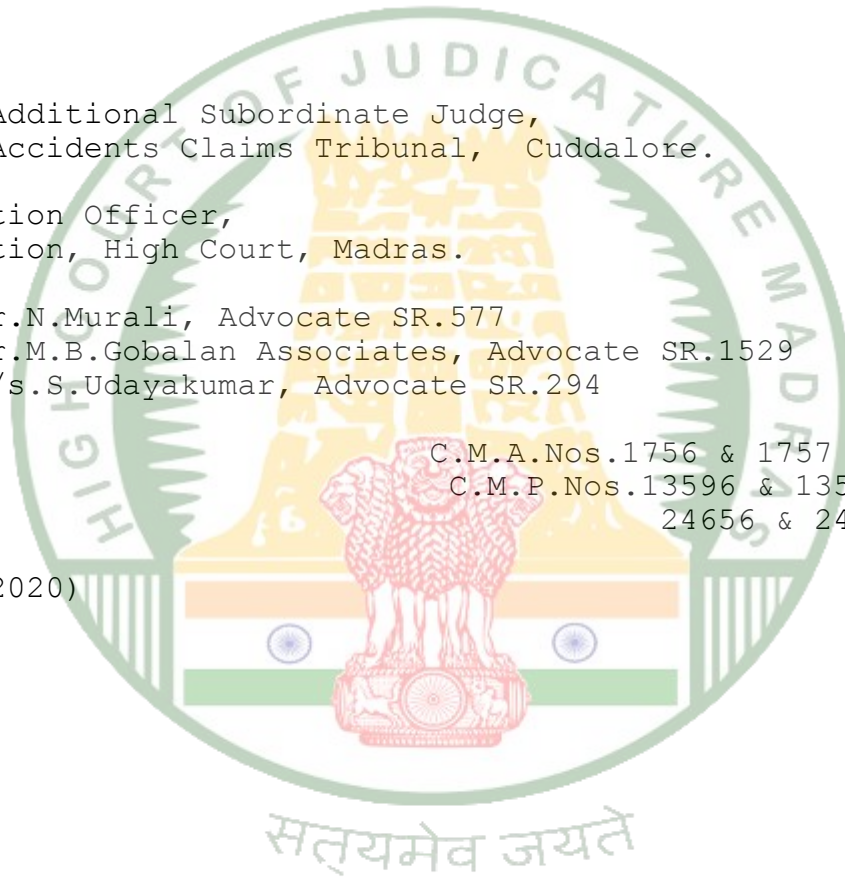
+2cc to Mr.N.Murali, Advocate SR.577

+1cc to Mr.M.B.Gobalan Associates, Advocate SR.1529

+1cc to M/s.S.Udayakumar, Advocate SR.294

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VSNI (CO)
CB (09/09/2020)



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