

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.12.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2475 of 2014

and

M.P.No.1 of 2014

M/s.Bajaj Allianz General Insurance Company Limited,
No.25/26, Prince Towers, 4th Floor, College Road,
Nungambakkam, Chennai - 600 006. .. Appellant /2nd Respondent

Vs.

1.Manonmani

2.S.Suganya

3.Minor. Deepa

4.Minor. Monisha

5.Minor. Vettrivel

6.Minor. Balaji

7.Minor. Santhosh

8.Minor. Vijayan

(Minor respondents 3 to 8 represented by their
mother and guardian 1st respondent herein)

9.M.Muthaiah

.. Respondents/Petitioners 1 to
8 and first respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 19.03.2014 made in M.C.O.P.No.95 of 2009 on the file of the Motor Accidents Claims Tribunal, Sub Court, Madurantakam.

For Appellant : Mr.T.K.Premkumar

For RR 1 to 8 : Dr.S.S.Swaminathan

For R9 : No appearance

J U D G M E N T

The matter is heard through "Video Conferencing".

2.This Civil Miscellaneous Appeal has been filed against the award dated 19.03.2014 made in M.C.O.P.No.95 of 2009 on the file of the Motor Accidents Claims Tribunal, Sub Court, Madurantakam.

3.The appellant is the 2nd respondent in M.C.O.P.No.95 of 2009 on the file of the Motor Accidents Claims Tribunal, Sub Court, Madurantakam. The respondents 1 to 8 filed the said claim petition, claiming a sum of Rs.10,00,000/- as compensation for the death of one Shanmugam, who died in the accident that took place on 19.06.2009.

4.According to respondents 1 to 8, on 19.06.2009 at about 11.45 P.M., while the deceased and others were travelling with a machinery in a lorry belonging to 9th respondent bearing Registration No.TN 76 D 6729 on Chennai - Tirunelveli N.H.Road near west of Puliarai 'S' bend, the driver of the lorry drove the same in rash and negligent manner and took a sudden turn in the 'S' bend. Due to the said impact, the said Shanmugam was thrown out from the lorry and he fell down on the road and the lorry ran over the deceased and caused the accident. In the accident, the said Shanmugam sustained fatal injuries and died on the spot. Therefore, the respondents 1 to 8 filed the said claim petition claiming a sum of Rs.10,00,000/- as compensation against the 9th respondent and appellant-Insurance Company, being the owner and insurer of the lorry respectively.

5.The 9th respondent-owner of the lorry remained exparte before the Tribunal.

6.The appellant-Insurance Company filed counter statement and denied all the averments made by the respondents 1 to 8. According to appellant, the deceased travelled in the lorry as unauthorized passenger and not as helper, as mentioned in column No.5 of the claim petition. The deceased travelled only as gratuitous passenger in the 9th respondent's lorry. Gratuitous passengers are not covered under the policy issued by the appellant and hence, the appellant is not liable to pay any compensation to the respondents 1 to 8. Only the 9th respondent is liable to pay the compensation since, he only permitted the deceased to travel in the lorry as unauthorized passenger. The 9th respondent also has not informed about the accident to the appellant. The appellant denied the age, avocation and income of the deceased. In any event, the quantum of compensation claimed by the respondents 1 to 8 are highly excessive and prayed for dismissal of the claim petition.

7.Before the Tribunal, the 1st respondent examined herself as P.W.1, one Mari, who was an eye-witness to the accident was examined as P.W.2 and 4 documents were marked as Exs.P1 to P4. On behalf of the appellant, one Charles Vijaychandran, an Official from the appellant-Insurance Company was examined as R.W.1 and copy of the insurance policy was marked as Ex.R1.

8.The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the lorry belonging to the 9th respondent and directed the appellant-Insurance Company to pay a sum of Rs.6,59,800/- as compensation to the respondents 1 to 8.

9.Against the said award dated 19.03.2014 made in M.C.O.P.No.95 of 2009, the appellant-Insurance Company has come out with the present appeal.

10.The learned counsel appearing for the appellant-Insurance Company contended that the Tribunal failed to appreciate the facts of the case properly. The Tribunal failed to see that there was no actionable negligence on the part of the driver of the lorry. The Tribunal ought to have seen that there is no collision of lorry with other vehicle. The deceased traveled on the load kept in the lorry in violation of provisions of Motor Vehicles Act. At the time of accident, 9 persons traveled in the lorry and the same is evidenced in the F.I.R., which was registered based on the complaint given by one of such persons who traveled along with deceased in violation of policy and permit conditions. The Tribunal failed to see the persons who traveled along with deceased did not sustain any injuries. The Tribunal ought not to have accepted the evidence of P.W.2, alleged to be the eyewitness who traveled in the lorry at the time of accident. The name of P.W.2 was not mentioned in the F.I.R. The policy issued by the appellant covers only for two persons employed in connection with operation and maintenance of the lorry. The Tribunal erroneously held that two persons traveled in connection with the machineries loaded in the lorry. The policy issued by the appellant covers only goods carried in the lorry and not machineries. Even according to P.W.1, the deceased was traveled only for laying foundation work and he cannot be considered as an employee as operation and maintenance. The deceased was only a gratuitous passenger and he is not a owner or representative of the owner of the goods. Though the appellant has raised grounds with regard to quantum of compensation, at the time of hearing, the learned counsel appearing for the appellant restricted his arguments only with regard to liability and prayed for setting aside the award passed by the Tribunal.

11.The learned counsel appearing for the respondents 1 to 8 made his submissions supporting the award passed by the Tribunal and prayed for dismissal of the appeal.

12.Though notice has been served on the 9th respondent and his name is printed in the cause list, there is no representation for him either in person or through counsel.

13. Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the respondents 1 to 8 and perused the entire materials on record.

14. From the materials available on record, it is seen that it is the contention of the respondents 1 to 8 that deceased traveled in the lorry along with machineries for laying foundation in Kovalam at Trivandrum. Due to rash and negligent driving by the driver of the lorry belonging to 9th respondent, the deceased was thrown out of the lorry when the driver of the lorry drove the same in a rash and negligent manner at a curve and lorry ran over the deceased and he suffered fatal injuries and died. To substantiate their contention, they examined the 1st respondent as P.W.1 and one Mari as P.W.1, who traveled in the lorry at the time of accident. On the other hand, it is the contention of the appellant that the deceased was an unauthorized passenger and he traveled in the lorry contrary to the provisions of Motor Vehicles Act. The deceased traveled on the load, fell down from the lorry and due to his negligence only accident has occurred. P.W.2 is not an eyewitness and more persons traveled in the lorry than the permitted capacity and hence, appellant is not liable to pay compensation. The appellant has not let in any evidence contrary to the evidence of P.W.1 & P.W.2 and failed to prove that P.W.2 did not travel in the lorry at the time of accident except contenting that name of P.W.2 was not mentioned in the F.I.R. P.W.2 in the cross examination denied the suggestion that he did not travel in the lorry at the time of accident. The Tribunal considering the evidence of P.W.1 & P.W.2 and in the absence of any contra evidence, held that accident has occurred only due to rash and negligent driving by the driver of the lorry belonging to 9th respondent. There is no error in the said finding of the Tribunal fixing negligence on the part of the driver of the lorry belonging to 9th respondent.

15. As far as liability of the appellant is concerned, P.W.1 and P.W.2 have stated that the deceased and others traveled along with machineries for laying foundation and the same has been mentioned in F.I.R. It is the contention of the appellant that the policy issued by them covers only goods and not machineries and the two persons mentioned in the policy with regard to operation and maintenance is only with regard to lorry when it is stationed. The said contention is without merits. When the 9th respondent paid additional premium for two persons for operation and maintenance, it covers for two employees carrying the goods in the vehicle belonging to 9th respondent. It is not the case of the appellant that no machinery was transported in the lorry at the time of accident. On the other hand, it is the case of the appellant that deceased was sitting

on the load contrary to the provisions of Motor Vehicles Act, fell down from the lorry due to his own negligence and invited the accident. Further R.W.1 has admitted that 9th respondent has paid additional premium for two employees for operation and maintenance of machinery. The Tribunal considering Ex.R1/policy, held that 9th respondent paid additional premium for two employees. On consideration of the above materials, the Tribunal has held that appellant is liable to pay the compensation to the respondents 1 to 8. There is no error in the said finding of the Tribunal warranting interference by this Court.

16. In the result, this Civil Miscellaneous Appeal is dismissed and sum of Rs.6,59,800/- awarded by the Tribunal as compensation to the respondents 1 to 8, along with interest and costs is confirmed. The appellant-Insurance Company is directed to deposit the amount awarded by the Tribunal 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 judgment to the credit of M.C.O.P.No.95 of 2009 on the file of the Motor Accidents Claims Tribunal, Sub Court, Madurantakam. On such deposit, the respondents 1 and 2 are permitted to withdraw their respective share of the award amount as per the ratio of apportionment fixed by the Tribunal, along with proportionate interest and costs, after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal. The share of the minor respondents 3 to 8 are directed to be deposited in any one of the Nationalized Banks, till the minor respondents 3 to 8 attain majority. On such deposit, the 1st respondent, being the mother of the minor respondents 3 to 8 is permitted to withdraw the accrued interest once in three months for the welfare of the minor respondents 3 to 8. Consequently, the connected Miscellaneous Petition is closed. No costs.

Sd/-

Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

krk

To

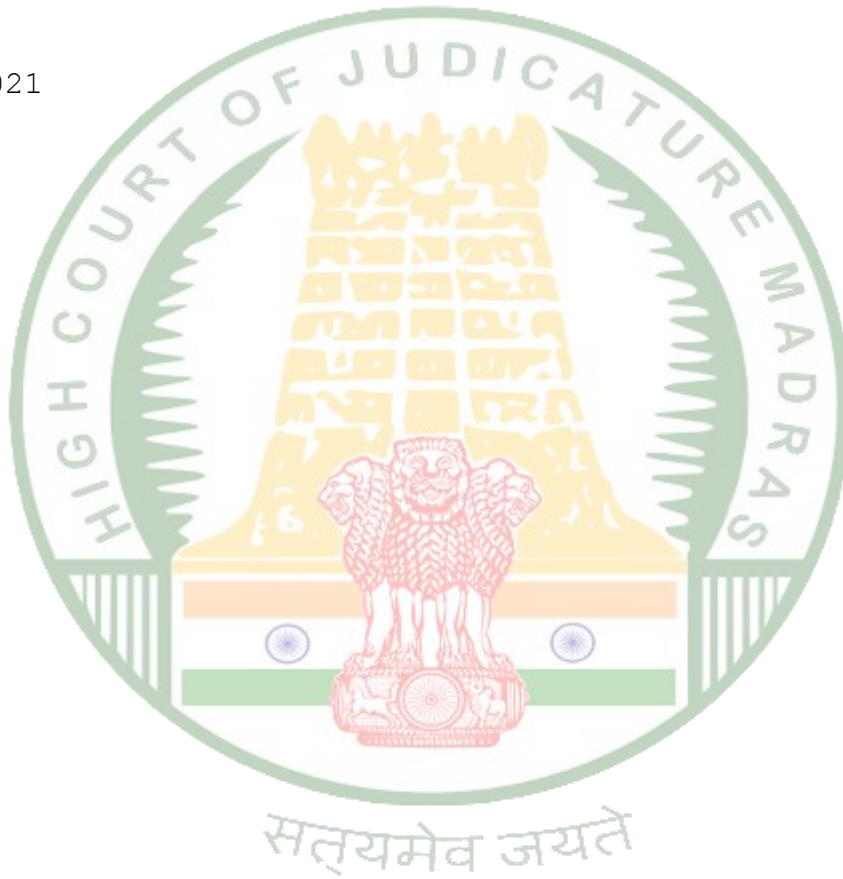
1.The Subordinate Judge,
Motor Accidents Claims Tribunal,
Madurantakam.

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

+1 cc to Mr.T.K.Prem Kumar Advocate sr41373
+1 cc to Mr.S.S.Swaminathan Advocate sr41278

C.M.A.No.2475 of 2014

vba (co)
aa23/02/2021



WEB COPY