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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.02.2021

CORAM

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

CMA.No.1207 of 2016
and
C.M.P.No.9136 of 2016

Bajaj Allianz General Insurance Company Limited,
Having office at 11, Office No. 6-A, People's Park,
3rd floor, Government Arts College,
Coimbatore.

...Appellant

Vs.

1.Santhi
2.Senthilraj
3.Saranaya
4.Sarojini

...Respondents

PRAYER: This Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988, against decree and the judgment dated 05.12.2015, made in MCOP.No. 78 of 2006, on the file of the Motor Accidents Claims Tribunal (Special District Court), Salem.

For Appellant : Mr.J.Michael Visuvasam

For Respondents : No appearance
Served

JUDGMENT

This Civil Miscellaneous Appeal has been preferred by the appellant/Insurance Company on the point of liability.

2.The respondents herein have filed above MCOP.No.78 of 2006 before the Special District Court, Salem (Motor Accidents Claims Tribunal) for claiming compensation for the death of the husband of the first claimant in the road accident. As per Ex.P1/FIR, unknown lorry said to have dashed against the deceased while he was moving in a two wheeler bike, subsequently he succumbed to injuries in the vital parts of his body.



3.It is a specific case of the Insurance Company that since the accident has taken place due to the rash and negligence driving of the injured himself, the Insurance Company is liable to pay only the personal liability and personal accident cover to the extent of Rs.1,00,000/- (Rupees One Lakh Only).

4.Heard J.Michael Visuvasam, learned counsel for the appellant/Insurance Company and perused the materials placed on record.

5.During the trial, the staff from the Insurance Company would depose that the said amount of Rs.1,00,000/- has already been deposited.

6.After going through the cause title in MCOP.No.78/2006, this Court finds that the petitioners themselves have arrayed as Respondents 1 to 4 in the said MCOP, but the petitioners cannot be the respondents at the same time in the same petition. The owner of the vehicle and the Insurance Company of the offending vehicle were not impleaded as a party respondents. I find that the proceedings thereon by the said Court is not in accordance with the Motor Vehicles Act. Furthermore, if the accident is caused due to the negligence on the part of the driver, the Insurance Company cannot be held liable. If at all, they are entitled only Rs.1,00,000/- and the same was already disposed by the Insurance Company and hence, I find that the compensation awarded by the Tribunal suffers from illegality on the face of the record and hence, the same is unsustainable in law and the same is hereby set aside.

7.Accordingly, this Civil Miscellaneous Appeal stands allowed and the compensation awarded by the Tribunal in MCOP.No.78 of 2006, is hereby set aside and the appellant/Insurance Company is directed to withdraw the additional deposited amount of Rs.25,000/- at the time of admission of the appeal.

Sd/-
Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

dua



To:

The Special District Judge,
The Motor Accidents Tribunal,
Salem.

Copy to:

The Section Officer,
V.R.Section,
High Court, Madras-104.

+1cc to Mr.J.Michael Visuvasam, Advocate, S.R.No.10122

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