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C.M.A.No.1184 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.12.2023

CORAM :

THE HONOURABLE MR. JUSTICE M. DHANDAPANI

C.M.A.No.1184 of 2012

and

M.P.Nos.1 and 2 of 2012

Bajaj Allianz General Insurance Company
Limited, by its Manager,
having its head office at GE Plaza,
III Floor, Airport Road, Yerwada,
Pune 411 006 and the Branch office at
Door No.11 (Office No.6A), People's
Park, 3rd Floor, Govt. Arts College Road,
Coimbatore – 641 018.

... Appellant

Vs.

1. N.Tamil Selvan (Died)
2. N.Subash
3. N.Jothimani
Respondents

...

(Respondent No.1 died. Respondent No.3 is brought on record as Lrs of the deceased R-1 Viz N.Tamil Selvan vide court order dated 30.10.2023 made in CMP.Nos.24907, 24909 and 24910 of 2023 in C.M.A.No.1184 of 2012)

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against decree and judgment dated 29.09.2011, made in M.C.O.P.579 of 2009 on the file of Motor Accident Claims Tribunal



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and I Additional Sub Court, Coimbatore.

For Appellant : M/s.K.Poomalar

For Respondents : Not ready in notice for
R2

Died [R1]

M/s.L.Mouli [R3]

JUDGEMENT

The Civil Miscellaneous Appeal filed against decree and judgment dated 29.09.2011, made in M.C.O.P.579 of 2009 on the file of Motor Accident Claims Tribunal and I Additional Sub Court, Coimbatore.

2. It is the case of the first respondent / claimant that on 09.03.2009 at about 9:00 p.m. when the first respondent was travelling as pillion rider in the vehicle bearing registration No.TN37 AB 1265 driven by his brother, the second respondent herein in a rash and negligent manner, which led to the vehicle falling in a deep pit resulting in the accident, due to which the first respondent sustained grievous injuries. Claiming compensation for a sum of Rs.20,00,000/-, the first respondent has filed a claim petition before the Tribunal.



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3. Before the Tribunal, the claimant examined himself as P.W.1 and examined P.W.2 Doctor and marked Exs.P.1 to Ex.P.19. The respondents examined R.W.1 and marked Ex.R1. After considering all the oral and documentary evidence, the Tribunal, awarded a sum of Rs.9,14,500/- as compensation to the claimant. Aggrieved over the same, the appellant/insurance company is before this Court.

4. The learned counsel for the appellant / insurance company submits that the vehicle in question belonged to one Natarajan, who is the father of the first respondent / claimant and the second respondent herein. However, they being the children of the said Natarajan, the first respondent / claimant is not entitled to file claim petition u/s 166 of the Motor Vehicles Act, 1988, as he was not a third party. Accordingly, he prayed to allow this appeal.

5. Per contra, learned counsel appearing for the third respondent submitted that, taking into consideration all the relevant documents, the Tribunal has rightly fixed the compensation, which does



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not require any interference. Accordingly, he prays for dismissal of the appeal.

6. Heard the learned counsel appearing for the appellant and the learned counsel appearing for the third respondent and perused the materials placed on record.

7. The accident in issue is not dispute. The whole dispute is raised by the insurance company on the ground that the owner of the vehicle is the son of the claimant, who had suffered injuries and, therefore, would not fall within the ambit of third party to claim compensation.

8. Though such a contention has raised on behalf of the appellant, however, it should not be lost sight of that the Tribunal has given a clear finding that the vehicle is insured with a package policy, meaning thereby that it has complete coverage in respect of the pillion rider as well. The issue with regard to compensation to the pillion rider, who suffers injury in an accident, in which the vehicle involved is covered under a package policy has since been settled and it has been held that the pillion rider in a



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vehicle covered under a package policy would not fall within the ambit of gratuitous passenger and, therefore, would be entitled to compensation at the hands of the insurer.

9. In the case on hand, the claimant having travelled as a pillion rider in the vehicle covered under a Package Policy, the claimant is entitled to compensation. Therefore, the finding recorded by the Tribunal does not suffer the vice of perversity or arbitrariness and the same stands confirmed.

10. Insofar as the compensation awarded the various heads are concerned, it transpires from the records that the claimant had suffered fracture in the spinal cord, for which the claimant had undergone surgery. Further, P.W.2, the doctor, who had been examined had spoken about the injuries sustained by the claimant and the effect of the injuries on the claimant. P.W.2 had assessed the disability at 75% and had further gone on to depose that the injuries suffered by the claimant had resulted in the claimant losing sensation below his hip. The severity of the injuries have been spoken by P.W.2. Considering the nature of injuries suffered, the



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Tribunal had fixed the disability at 75% and fixing the notional income at Rs.5000/-, had quantified the loss of earning capacity at Rs.5,40,000/-, which does not require any interference as it is based on proper appreciation of the materials.

11. Insofar as the compensation awarded under the other heads are concerned, a careful perusal of the same show that the said compensation are just and reasonable and the same cannot be said to be excessive. Therefore, the compensation awarded under the other heads are also confirmed.

12. For the reasons aforesaid, the Civil miscellaneous appeal is dismissed. Consequently connected miscellaneous petitions are also dismissed. No costs.

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Index : Yes / No

Speaking order / Non speaking order

Neutral Citation Case : Yes / No



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To

- 1.The Motor Accident Claims Tribunal and I Additional Sub Court, Coimbatore.
- 2.The Section Officer, V.R.Section, High Court, Madras.



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M.DHANDAPANI, J.

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