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C.M.A.No.1277 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:21.06.2023

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THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN

CMA.No.1277 of 2016

and

CMP.No.9556 of 2016

Bajaj Allianz General Insurance Company Ltd.,
No.25/26, Prince Tower, 4th Floor, College Road,
Nungambakkam, Chenna – 600 006.

... Appellant

..Vs..

1.N.Arokiya Mary
2.N.Honestraj
3.N.Arunkumar(minor)
4.N. Keerthana Mary (Minor)
(Minor respondents 3 and 4 rep by mother/1st respondent)
5.M/s.Touchline Technologies Pvt.Ltd,
No.13, 1st Floor, Somasundaram Street,
T.Nagar, Chennai – 600 017.

6.Major B.S.Rita

7. HDFC ERGO General Insurance Company Ltd.,
6th floor, MBC TOWER, Old No.90,
New No.199, Luz Church Road,
Mylapore, Chennai – 600 004.

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the judgment and decree dated 16.10.2015



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made in MCOP.No.4565 of 2012 on the file of the Motor Accidents Claims Tribunal (II Court of Small Causes) Chennai.

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For Appellant : Mr.J.Michael Visuvasam

For Respondents : Mr.N.M.Muthurajam R1 to R4
Mr.K.Poomalai for R7
Not ready in notice – R5 & R6

JUDGMENT

This appeal has been filed by the appellant/Insurance Company seeking to set aside the impugned award dated 16.10.2015 in MCOP.No.4565 of 2012 passed by the Motor Accidents Claims Tribunal (II Court of Small Causes) Chennai.

2. The facts of the case briefly are as under:

On 03.09.2012 at about 19.30 hours, when the deceased was driving a car bearing Regn.No.PY-01-BG-2691 from Thousand Lights to Pondy Bazaar along G.N.Chetty Road, proceeding east to west direction, a



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car bearing Regn.No. TN-09-BK-1768 was parked in the middle of the service road, at that time, the driver of the car bearing Regn.No.PY-01-BG-2691 rammed against the car bearing Regn.No.TN-09-BK-1768 and thus caused the accident. The accident occurred during the course of the employment of the deceased with 3rd respondent. The 5th respondent is the owner and the appellant is the insurer of the car bearing Regn.No.TN-09-BK-1768. The 6th respondent is the owner and 7th respondent is the insurer of the car bearing Regn.No.PY-01-BG-2691. Due to the abovesaid accident, driver namely G.Nathan sustained fatal injuries and died. The claimants seek compensation of Rs.16,00,000/- before the Tribunal. After trial, the claimants were awarded a sum of Rs.17,86,000/- as compensation, fixing entire liability on the appellant/Insurance Company as insurer of 5th respondent who is owner of the vehicle i.e., Car bearing Regn.No.TN-09-BK-1768. Thus, the Tribunal has directed the appellant/Insurance company to deposit a sum of Rs.17,86,000/- to the claimants as compensation. Being aggrieved over the aforesaid award, the appellant/Insurance Company has filed the present appeal seeking to set aside the award of the Tribunal by allowing this appeal.



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3. The learned counsel for the appellant would submit that there was no actionable negligence traceable on the part of the driver of the Hyundai Verna LMV car bearing Regn.No.TN-09-BK-1768 belonging to the 5th respondent which was duly parked on the left extreme side of the service road of G.N.Chetty Road near Tower Victoria in front of Nuts and Spices Shop, a car bearing Regn.No.PY-01-BG-2691 driven by its driver, in an utterly rash and negligent manner, hit behind the parked Hyundai Verna Car on its rear right hand side and thereby caused the accident. After due investigation, police have closed the criminal case as “Charge abates” upon the death of the accused driver vide Ex.R4 for dropping further action. The Ex.P6/FIR marked on the side of the claimants themselves was lodged by the Managing Director of the 5th respondent upon the occurrence which reveals that the entire fault in causing this accident was only on the part of the deceased himself. The very cause and manner of accident would attract the doctrine of '*res ipsa loquitur*'. The Tribunal has failed to take into consideration that PW2 who is an eye witness has conceded in the cross examination that there are city road lamps at and round the accident spot,



the service road has a width of about 20 feet, the car bearing Regn.No.TN-09-BK-1768 was parked close to the compound wall of Nuts and Spices Shop and that the car bearing Regn.No.TN-09-BK-1768 got damaged both on its rear side due to collusion of car bearing Regn.No.PY-01-BG-2691. It has grossly erred in hiding that the accident took place due to the negligence of the driver of the first respondent's vehicle who parked the car in the middle of the service road without indicator light during night time in an hazardous manner which is contrary to such categorical admissions of PW2 and Ex.R4 to Ex.R8. The liability of the 4th respondent cannot be avoided for the reason of dishonour of cheque for the factual reason that the cheque was not dishonoured by the bank for in-sufficient funds but for a procedural reason that signature of the payer was found to vary. He further submitted that the entire liability fastened on the Insurance Company is incorrect. He further submitted that the 5th respondent and the appellant are absolutely unnecessary parties to this case and hence the claim deserves to be dismissed outright as against them. He further submitted that the appellant has deposited the entire award amount before the Tribunal. Hence he prayed to set aside the award of the Tribunal by allowing this appeal.



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4. The learned counsel for the respondents 1 to 4 has submitted that the award of the Tribunal is a just and fair compensation. Hence, it does not require any interference of this court.

5. Heard the learned counsel for the appellant and the learned counsel for the respondents 1 to 4 and 7 and perused the entire documents produced before this Court.

6. During the trial, on the side of the claimants, two witnesses were examined as P.W.1 and P.W.2 and six documents were marked as Ex.P.1 to Ex.P.6. On the side of the respondents, two witnesses were examined as R.W.1 and R.W.2 and eleven documents were marked as Ex.R.1 to Ex.R11.

7. Perusal of documents would reveal that the deceased vehicle had hit against the stationed vehicle. In this case, FIR is marked as Ex.P6 and the same is filed against the deceased. Perusal of the sketch / Ex.R5 reveals that there was some space through which another vehicle may pass on. In



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the event of both the parties are liable for the accident, the ratio of contributory negligence has to be fixed. Based on the FIR and sketch, this court is of the considered opinion that the deceased is also responsible for causing the accident to certain extent and accordingly, fix 25% negligence on the part of the deceased and 75% of the negligence on the part of the appellant/Insurance Company.

8. After considering the aforesaid facts and circumstances of the case and on perusal of the entire records, the compensation awarded by the Tribunal is modified by fixing the ratio on the negligence aspect in which 25% is fixed on the deceased and the balance 75% of the award amount shall be borne by the appellant/Insurance Company. Other aspects of the award of the Tribunal shall remain the same.

9. In the result,

(i) This Appeal is partly allowed. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.



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WEB COPY (ii) Since the appellant / Insurance Company has already deposited the entire award amount before the Tribunal, this Court now directs the appellant/Insurance Company to withdraw 25% of the award amount from the Tribunal. The Tribunal is directed to transfer the award amount along with accrued interest to the bank account of the claimants in the same ratio as apportioned by the Tribunal through RTGS within a period of two weeks thereafter.

21.06.2023

Index: Yes/No
Internet: Yes/No
gv

To

1. The Motor Accident Claims Tribunal,
(II Court of Small Causes) Chennai.

2. The Section Officer
V.R.Section,
High Court of Madras.

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A.A.NAKKIRAN, J.

gv

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