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C.M.A. No.378 of 2018 and C.M.A. No.2833 of 2019



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.07.2023

Coram:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

C.M.A. No.378 of 2018 and
C.M.A. No.2833 of 2019 and
C.M.P. No.3618 of 2018

In C.M.A.No.378 of 2018

M/s.Bajaj Allianz General
Insurance Company Limited,
Office No.6A, 'Peoples Park',
III Floor,
Government Arts College Road,
Coimbatore

... Appellant

Vs.

1. Kaveri
2. Madheswaran
3. Chinthamani
4. Karthikeyan

... Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the judgment and decree dated 07.06.2017, passed in M.C.O.P. No.234 of 2010, by the Motor Accidents Claims Tribunal (Subordinate Court) Sankari.

For Appellant : Mr.Michael Visuvasam

For Respondents : Mr.T.S.Arthanareeswaran for
R1 to R3
R4 - No Appearance



In C.M.A. No.2833 of 2019

1. Kaveri
2. Madheswaran
3. Chinthamani

... Appellants

Vs.

1. Karthikeyan

2. M/s. Bajaj Allianz General
Insurance Company Limited,
Office No.6A, 'Peoples Park',
III Floor,
Government Arts College Road,
Coimbatore

... Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, to enhance the Award in the judgment and decree dated 07.06.2017 made in M.A.C.T.O.P. No.234 of 2010, on the file of the Motor Accidents Claims Tribunal (Subordinate Court) Sankari.

For Appellants : Mr.T.S.Arthanareeswaran

For Respondents : Mr.J.Michael Visuvasam for R2
R1 - No Appearance

COMMON JUDGMENT

The Civil Miscellaneous Appeal in C.M.A. No.379 of 2018 has been filed by the Insurance Company and the Civil Miscellaneous Appeal in C.M.A. No.2833 of 2019 has been filed by the claimants against the judgment and decree dated 07.06.2017, passed in M.C.O.P. No.234 of 2010, by the Motor Accidents Claims Tribunal (Subordinate Court) Sankari.



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2. The case of the claimants is that on 07.10.2009 at about 2.30 p.m., the deceased Allimuthu was proceeding in his bicycle at the extreme left side of Tiruchengode to Erode Main Road. While he was nearing the Mini Auto Stand, Sandhaipet Medu, a Hyundai Car bearing Regn. No.TN-39-AK-5599 which came from the opposite direction driven by its driver in a rash and negligent manner, dashed against the bicycle of the deceased Allimuthu due to which, the deceased fell down and sustained sever head injuries. Immediately, the deceased was given first aid at Kongu Hospital, Tiruchengode. Thereafter, he was given further treatment at Thirukumaran Hospital-Tiruchengode, Krishna Hospital-Tiruchengode, KG Hospital-Coimabtoe, Salem Vinayaga Mishan Hospital and Madurai Raghavendra Hospital. However, he died on 11.11.2009 without responding to the treatment.

3. The claimants who are the wife, son and daughter of the deceased, had filed a claim petition in M.C.O.P. No.234 of 2010 before the Motor Accidents Claims Tribunal (Subordinate Court) at Sankari, claiming compensation of Rs.10,00,000/- for the death of the deceased Allimuthu stating at the time of accident, the deceased was aged 62 years and by doing



agriculture and milk business, he was earning Rs.10,000/- per month and due to his death, the claimants suffered both physical pain and mental agony.

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4. In order to substantiate the claim before the Tribunal, on the side of the claimants, 4 witnesses were examined as P.W.1 and P.W.4 and 8 documents were marked as Ex.P.1 to Ex.P.8. On the side of the respondents, 3 witnesses were examined as R.W.1 to R.W.3 and 3 documents were marked as Ex.R1 to Ex.R3. Besides 10 documents were marked as Ex.X.1 to Ex.X10.

5. The 4th respondent in CMA No.378 of 2018/the owner of the offending car set ex-parte before the Tribunal.

6. The Tribunal, after hearing the arguments of the learned counsel on either side and considering the materials, awarded compensation of Rs.9,20,000/- and directed the insurer of the offending car to pay the compensation to the claimants at the first instance and then to recover the same from the owner of the car.

7. Aggrieved by the Award passed by the Tribunal, the insurer of



the offending car, has filed the appeal in CMA No.378 of 2018 to set aside the Award passed by the Tribunal and the claimants have filed the appeal in CMA No.2833 of 2019 for enhancement of compensation.

8. The learned counsel for the Insurance Company/appellant in CMA No.378 of 2018 submitted that though the accident is alleged to have taken place on 07.10.2009, the complaint has been given by the son of the deceased only on 30.10.2009 i.e. with 23 days delay from the date of accident. However, the son of the deceased was not examined as a witness. Further, though one Thamizharasan/P.W.2 alleged to be the eyewitness to the accident, there is no mentioning about the involvement of the alleged car in the complaint and it is mentioned as unknown vehicle. Further, the so called eyewitness/P.W.2 is not the informant to the occurrence and he was also not shown as an eyewitness in the charge sheet. Therefore, the presence of the alleged eyewitness/P.W.2 is highly doubtful. Some unknown vehicle has hit against the deceased and caused the accident and since, the claimants could not identify that vehicle, they have fixed the said car subsequently in order to get the compensation. Even they have not produced the copy of Accident Register which is the first document to show regarding the accident and the



nature of injuries sustained by the deceased. Further, the Investigating Officer/P.W.4 has stated that they found the accused based on the information given by one Venkatesh who is having a vessel shop near the occurrence place and seen the accident. However, the said Venkatesh was not examined as a witness. The statement recorded by the Investigating Officer/P.W.4 under Section 161 Cr.P.C. from the said Venkatesh shows that the person who had caused the accident only had taken the deceased in his car and admitted in the hospital and he had given Rs.500/- for the medical expenses of the deceased and had also given his mobile number as 9790031552 stating to call him if anything is urgent. But prior to that, none of the witnesses have spoken that the said car only was involved in the accident and even the FIR has been registered against unknown vehicle. Therefore, the claimants have not proved that the said car only was involved in the accident due to which, the deceased sustained injuries and subsequently, succumbed to the injuries. The Tribunal failed to consider the said facts and erroneously fixed the liability on the insurer of the said car and awarded compensation which warrants interference. Further, though P.W.1/son of the deceased and P.W.3 have stated that the deceased was doing agriculture work and milk business and was earning Rs.10,000/- per month,



the same was not substantiated with any material however, the Tribunal has fixed Rs.10,000/- as the notional income of the deceased which is not acceptable. Further, the son and daughter of the deceased are married persons, whereas, the Tribunal has deducted 1/3 from the income of the deceased instead of deducting 1/2 towards his personal expenses. Therefore, the Award passed by the Tribunal is perverse and the same is liable to be set aside.

9. The learned counsel for the claimants submitted that the Tribunal has award only Rs.50,000/- each towards loss of love and affection and Rs.50,000/- towards loss of consortium which are very meager. Further, the amount awarded under the various heads are also on the lower side. Hence, he seeks enhancement of compensation.

10. Heard the learned counsel for the Insurance Company and the learned counsel for the claimants and perused the materials available on record.

11. In this case, the specific defence taken by the Insurance



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Company is that, the said car was not at all involved in the accident. Though in the claim petition, it is stated that due to the accident the deceased sustained severe injuries and took treatment at various hospitals, no medical report was produced except the letters given by the concerned hospitals and no copy of Accident Register was produced. If at all the eyewitness/P.W.2 or the said Venkatesh had seen the accident, they would have given a complaint to the police immediately after the accident and they would have stated about the involvement of the said car. Further, the date of accident is on 07.10.2009. But the FIR was not registered on the same day of accident and it has been registered with delay of 23 days i.e. on 30.10.2009. Though the deceased died on 11.11.2009, no statement was recorded from the deceased. Admittedly, the non registering of FIR on the same day may not be a sole ground to reject the claim of the claimants. But in this case, the FIR was registered with delay of 23 days and the said car alleged to have been involved in the accident was subjected to Motor Vehicle Inspection only after three months from the date of accident i.e. on 05.01.2010 and the Motor Vehicle Inspection Report does not show anything as if the said vehicle was damaged. Further, as stated above, though P.W.2 and one Venkatesh have stated that they had seen the accident and the driver of the car had given his



mobile number, the FIR has been registered against unknown vehicle.

Therefore, the presence of the alleged eyewitness/P.W.2 in the occurrence place is highly doubtful and the statement recorded under Section 161 Cr.P.C. from the said Venkatesh is also not believable and the same is not admissible.

12. Therefore, this Court finds that in order to get compensation only, the said car has been wrongly fixed in this case. Though in the claim petition, the claimants need not prove the case beyond reasonable doubt, the claimants have to prove the foundational facts that the alleged vehicle only was involved in the accident. In this case, this Court finds that the claimants have not proved their case with preponderance of probabilities that the alleged car only was involved in this accident and the driver of the car only caused the accident. Under these circumstances, this Court finds that the Award passed by the Tribunal is perverse. Therefore, the Award passed by the Tribunal is liable to be set aside.

13. However, since the death of the deceased is an accidental death, the claimants are entitled to only Rs.50,000/- (Rupees Fifty Thousand



Only) under the head of "no fault liability". Except the sum of Rs.50,000/- with interest, the balance amount deposited by the Insurance Company with interest shall be returned to the Insurance Company.

14. In the result, the Civil Miscellaneous Appeal filed by the claimants in CMA No.2833 of 2019, is dismissed. The Civil Miscellaneous Appeal filed by the Insurance Company in CMA No.378 of 2018 is allowed with the above direction. Consequently, connected Miscellaneous Petition is closed. There shall be no order as to the costs.

28.07.2023

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Index : Yes / No

Speaking Order : Yes / No

Neutral Citation Case : Yes/No



To

1. The Motor Accidents Claims Tribunal
(Subordinate Court) Sankari.

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



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C.M.A. No.378 of 2018 and C.M.A. No.2833 of 2019



P.VELMURUGAN. J.

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