IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.07.2023

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THE HON'BLE MR. JUSTICE P.VELMURUGAN

C.M.A.No.511 of 2018
and
C.M.P.No.4511 of 2018

The Manager,
Bajaj Allianz General Insurance Company Limited,
Regional Office, Chennai – 600 006.

... Appellant

vs.

1.Anusuya

2.Minor Asha
[Minor represented by her mother and
guardian the first respondent Anusuya herein]

3.Palanisamy

4.Saroja

5.M.Babu

6.The Superintendent of Police,
Office of Superintendent of Police,
Perambalur District.

7.The Inspector of Police,
Padalur Police Station,

Padalur, Perambalur District. ... Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 to set aside the judgment and decree dated 07.07.2017 made in MCOP.No.541 of 2009 on the file of the Motor Accident Claims Tribunal/Principal District Judge, Perambalur.

For Appellant : Mr.J.Michael Visuvasam

For Respondents : Mr.S.Sankar
for R1 to R4
R5- No such person
R6 and R7 – Not ready in notice

J U D G M E N T

Challenging the award dated 07.07.2017 passed by the Motor Accident Claims Tribunal/Principal District Judge, Perambalur in M.C.O.P.No.541 of 2009, the Insurance Company has preferred this appeal.

2. For the sake of convenience, the parties are referred to as per their ranking before the Tribunal.

3. The facts in a nutshell are as follows :

On 03.08.2009, the deceased was proceeding in Yamaha Libra motorcycle bearing Registration No.TN-46-E-0304 from Nedungoor to Padalur on Chennai-Trichy NH Road from South to North direction and during that time, on the Western side of the road, marking works were going on, due to which, the Western side of the road was blocked and all the vehicles were allowed to ply on the Eastern side of the road and the deceased was also riding his motorcycle on the Eastern side of the road. When the deceased, who rode the motorcycle on the Eastern side of the road was nearing Surya Maruthuva Kudil, a Maruthi Car bearing Registration No.TN-02-AJ-3550, belonging to the first respondent and insured with the second respondent came from the North to South direction, which was driven by its driver in a rash and negligent manner, dashed against the deceased motorcycle. Due to the said impact, the deceased sustained fatal injuries all over the body. Immediately, he was taken to Retna Global Hospital, Trichy, but the deceased died on the way to the hospital. Hence, the claimants filed the claim petition claiming a sum Rs.15,00,000/- as compensation.

4. Respondents 1, 3 and 4 remained *ex-parte* before the Tribunal.

5. The said claim petition was resisted by Bajaj Allianz General Insurance Company Limited by filing a Counter statement. It is the specific defence of the Insurance Company that the deceased, who drove the two wheeler in rash and negligent manner, dashed on the right side of the car door and that the accident had occurred. Therefore, the Insurance Company is not liable to pay compensation to the claimants indemnifying the owner of the vehicle/first respondent.

6. In order to prove the claim on the side of the claimants, P.W.1 to P.W.3 were examined and 8 documents were marked as Exs.P1 to P8. On the side of the Insurance Company, R.W.1 to R.W.3 were examined and 4 documents were marked as Ex.R1 to Ex.R4.

7. The Tribunal, after analysing the entire evidence, came to the conclusion that the accident was the result of rash and negligent driving of the driver of the Maruthi Car bearing Registration No.TN-02-AJ-3550 and

passed an award for a sum of Rs.8,18,500/-. The break-up details of the amounts awarded by the Tribunal under various heads are as follows :

S.No.	***Heads under which the amount is awarded by the Tribunal***	***Amount in Rs.***
1.	Loss of Income	6,88,500
2.	Loss of Love and Affection	50,000
3.	Consortium to 1st claimant	50,000
4.	Funeral Expenses and Transportation	25,000
5.	Loss of Estate and Damages to clothing	5,000
	Total	**8,18,500**

8. Challenging the liability fixed by the Tribunal, the Insurance Company has filed the present appeal.

9.The learned counsel for the appellant/Insurance Company submitted that the deceased, who drove the motorcycle in a rash and negligent manner, dashed against the car and that the accident had occurred, which resulted in registering the case against the deceased Solaimalai. After investigation, the police authorities had come to the conclusion that the accident had occurred due to the negligence on the part of the deceased and closed the same as abated. However, the Tribunal failed to consider the same and erroneously fixed the liability on the driver of the Car. Since the deceased himself is the tort-feasor, he is not entitled to get any compensation and the Tribunal awarded compensation only on sympathetic ground.

10. The learned counsel for respondents 1 to 4/claimants submitted that on 03.08.2009 on Chennai-Trichy NH Road, near Padalur on the Western side of the road, marking works were going on and due to that, the Western side of the road was blocked and all the vehicles were allowed to ply on the Eastern side of the road, the deceased drove the two-wheeler slowly and cautiously on the left side of the road keeping the traffic Rules, however, the driver, who drove the offending car in a rash and negligent manner, dashed against the deceased. He further submitted that after the accident, P.W.2/eye witness took the deceased to the hospital for treatment, at that time, the driver of the car gave a complaint against the deceased,

subsequently, the case was closed. Thereafter, P.W.2 gave a complaint against the driver of the car and also sent representations to the superiors against the officer, who refused to register the case against the driver of the car. In the present case, P.W.2/eye witness has clearly stated that the deceased rode the two wheeler on the extreme left side of the road from South to North direction, however, due to the rash and negligent driving of the car driver, the accident had occurred. There is no contra evidence to prove that the deceased was solely responsible for the accident. Therefore, the Tribunal, after appreciating the entire materials, rightly fixed the liability on the driver of the car and since the car was insured with the appellant/Insurance Company, they are liable to pay compensation.

11. Heard the learned counsel for both sides and perused the materials available on record.

12. In cases of this nature, the claimants who are the dependents of the deceased, cannot be expected to prove the case beyond reasonable doubt. However, they have to establish the foundational facts

through eye witness. In the present case, P.W.2/eye witness has clearly stated the manner of the accident.

13. The accident is admitted. The offending vehicle involved in the accident is also admitted. The offending vehicle was insured with the second respondent/Insurance Company which is also not in dispute. The only dispute now raised before this Court is regarding the liability fixed by the Tribunal.

14. On a perusal of the records particularly the evidence of P.W.2, who is an eye witness to the accident, this Court finds that accident was the result of the rash and negligent driving of the driver of the Maruthi Car bearing Registration No.TN-02-AJ-3550, belonging to the first respondent and insured with the appellant/Insurance Company. On the date of accident, the policy was in force and there is no violation of policy conditions and an insurer, the appellant/Insurance Company is liable to pay compensation to the claimants. Therefore, the Tribunal has rightly fixed the

liability on the appellant/Insurance Company and this Court does not find any perversity in appreciation of the evidence.

15. The quantum of compensation is concerned, the amounts awarded by the Tribunal are "just, fair and reasonable" and hence, they are confirmed.

16. Considering the above facts and circumstances, there is no merit in the present appeal, which is accordingly dismissed, confirming the impugned Award passed by the Tribunal. There shall be no order as to costs in the present appeal. Consequently, connected miscellaneous petition is closed.

17. The appellant/Insurance Company is directed to deposit the compensation as awarded by the Tribunal within a period of six weeks from the date of receipt of a copy of this judgment, after adjusting the amount, if any already deposited by them before the Tribunal. On such deposit, the Tribunal is directed to credit the compensation to the Bank Account of the claimants, by following the judgment of a Division Bench of this Court in

C.M.A.No.428 of 2016, dated 11.03.2016 (reported in 2016 (2) LW 561 - The Divisional Manager, The Oriental Insurance Company Limited, Kannur Vs. Rajesh and others). The claimants are permitted to withdraw the amount of compensation in the ratio mentioned by the Tribunal. As far as the share of the second respondent/minor is concerned, the same shall be deposited in any Nationalised Bank until she attains majority and the interest accrued thereon shall be withdrawn by the first respondent/guardian.

19.07.2023

Index: Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation Case : Yes/No
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To
1. The Motor Accident Claims Tribunal,
Principal District Judge, Perambalur.

2.The Superintendent of Police,
Office of Superintendent of Police,
Perambalur District.

3.The Inspector of Police,
Padalur Police Station,
Padalur, Perambalur District.

4.The Section Officer,

V.R.Section,
High Court, Madras.

P.VELMURUGAN, J.

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