



C.M.A.No.2949 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.11.2023

C O R A M

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.No.2949 of 2019
and C.M.P.No.15661 of 2019

M/s.The Bajaj Allianz General
Insurance Company Limited,
'Prince Towers', Fourth floor,
No.25/26, Nungambakkam High Road,
Chennai-600 006.

... Appellant/ Respondent-II

Vs

1.Vijayalakshmi

... 1st Respondent/Petitioner-I

2.Abirajitha (minor)

... 2nd Respondent/Petitioner-II

3.R.Nallathambi

... 3rd Respondent/1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 9th August, 2017 passed in M.C.O.P.No.523 of 2011 by the Motor Accidents Claims Tribunal, (In the Court of IV Additional District Judge), at Ponneri.



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WEB COPY For Appellant ... Mr.J.Michael Visuvasam

For Respondents ... Mr.A.E.Ravichandran [R1 & R2]
... [R3] -Died (steps due)

JUDGEMENT

Challenging the impugned award dated 09.08.2017 passed by the Motor Accident Claims Tribunal, IV Additional District Judge, Ponneri in M.C.O.P.No.523 of 2011, the Appellant/Insurance Company has filed the present appeal questioning its liability.

2. It is the case of the claimants that on 10.09.08 at about 9.30 p.m., when the claimant was riding his bike bearing regn. No. TN-04-R-8087 at that time, the Tractor & Trailer bearing Regn. No.TN-20-AX1319 and TN.20.AX-1320 was parked on the road without signal and since there was no light in the road and the tail light of the tractor was also not lighted, the claimant dashed against the said tractor-trailer and suffered grievous injuries and succumbed to the same. Therefore, the claimants filed claim petition claiming compensation at the hands of the 2nd respondent, viz., the insurer of the vehicle.



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3. Before the Tribunal, the 1st claimant examined herself as P.W.1 and examined the P.W.2 and Ex.P.1 to Ex.P.9 were marked. On the side of the respondents, R.W.1 and R.W.2 were examined and marked Ex.R1 to Ex.R4. After adjudication, the Tribunal, awarded the compensation of Rs.6,06,072/- and directed the Appellant/Insurance Company and the 3rd Respondent to jointly and severally pay the compensation amount to the claimants. Aggrieved by the said award, the Appellant/Insurance Company has filed the present appeal.

4. Learned counsel appearing for the appellant/insurer submits that the deceased had driven his motor cycle in a rash and negligent manner and had caused the accident and, therefore, the insurer cannot be made liable to pay the compensation. It is the further submission of the learned counsel that the tractor having not parked in the middle of the road, the dashing of the vehicle by the deceased cannot be said to be an accident caused by the tractor-trailer making the insurer liable to indemnify the insured.



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5. Per contra, learned counsel appearing for the claimants submit that the tractor-trailer was parked without the tail light being switched on and in the dark of the night, the deceased had dashed the vehicle against the trailer and as a result of the same had passed away. Considering the above, the Tribunal has rightly fastened the liability on the insurer to pay the compensation, which does not warrant any interference.

6. This Court gave its careful consideration to the submissions advanced by the learned counsel appearing for the Appellant/Insurance Company as well as the Respondents/claimants and perused the materials available on record.

7. The accident is not disputed, but the appellant only questions its liability to pay the compensation. According to the appellant, the tractor-trailer was parked beyond the road and the claimant, driving his vehicle, had dashed against the tractor and, therefore, the insurer is not liable to pay the compensation. To substantiate its stand, the appellant relies upon the evidence



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of R.W.1 and R.W.2. R.W.1 is the Sub Inspector of Police, who had spoken about the FIR and the subsequent filing of the charge sheet after investigation. However, the Tribunal has rendered a finding that the outcome of the charge sheet has not been made known as to whether it was accepted or not and, therefore, the evidence of R.W.1 would not be of any avail to the appellant.

8. It is not disputed that the deceased had dashed against the parked tractor. However, it is to be pointed out that any vehicle, which is parked, as per Section 109 of the MV Rules, the parking light should be glowing. In the present case, there is a categorical finding by the Tribunal that the parking lights of the parked vehicle was not lit, which has resulted in the accident. Therefore, the whole negligence is on the part of the parked tractor-trailer. Had the tail lights been lit, the accident could have been averted. Therefore, the negligence could not be fastened on the deceased.

9. The Tribunal has considered all the relevant materials in proper perspective and had awarded just and reasonable compensation on all heads and the findings as well as the compensation awarded does not require any



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interference at the hands of this Court, for the reasons aforesaid.

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10. In the result, the Civil Miscellaneous Appeal stands dismissed and the impugned award passed by the Tribunal in M.C.O.P.No.523 of 2011 stands confirmed. There shall be no order as to costs in the present appeal. Consequently, the connected Miscellaneous Petition is closed.

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Index : Yes / No
Speaking Order / Non-speaking order
Neutral Citation Case : Yes / No
NHS

To

1.The Motor Accident Claims Tribunal,
IV Additional District Judge,
Ponneri.

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



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