



C.M.A.Nos.1983 & 1984 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.10.2023

CORAM :

THE HONOURABLE MR. JUSTICE M. DHANDAPANI

C.M.A.Nos.1983 & 1984 of 2017

and

C.M.P.Nos.10685 & 10686 of 2017

C.M.A.No.1983 of 2017

Bajaj Allianz General Insurance Company Ltd.,
No.25/066, 5th Floor, College Road,
Nungambakkam, Chennai – 14. ... Appellant/Respondent-2

Vs.

1.Mohan
2.Anjalai ... Respondents/Petitioners
3.Srinivasa Tabi ... Respondent/Respondent-1

C.M.A.No.1984 of 2017

Bajaj Allianz General Insurance Company Ltd.,
No.25/066, 5th Floor, College Road,
Nungambakkam, Chennai – 14. ... Appellant/Respondent-2

Vs.

1.Anandan ... Respondent/Petitioner
2.Srinivasa Tabi ... Respondent/Respondent-1



C.M.A.Nos.1983 & 1984 of 2017

Prayer in C.M.A.No.1983 of 2017 : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Decree and Judgment dated 9th day of February, 2012 made in M.C.O.P.No.449 of 2009 on the file of Motor Accident Claims Tribunal, (Sub Court), Tindivanam.

Prayer in C.M.A.No.1984 of 2017 : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Decree and Judgment dated 9th day of February, 2012 made in M.C.O.P.No.22 of 2010 on the file of Motor Accident Claims Tribunal, (Sub Court), Tindivanam.

C.M.A.No.1983 of 2017

For Appellant : Mr.Michael Viswasam
for M/s.R.V.Sivaraj

For Respondents : Mr.B.Gurunathan [R1 & R2]
Ex-parte [R3]

C.M.A.No.1984 of 2017

For Appellant : Mr.Michael Viswasam
for M/s.R.V.Sivaraj

For Respondents : Mr.B.Gurunathan [R1]
Ex-parte [R2]

COMMON JUDGMENT

Both the appeals arise out of a single accident.



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2. C.M.A.No.1983 of 2017 is filed challenging the award in M.C.O.P.No.449 of 2009, which is filed by the claimants claiming compensation of a sum of Rs.10,00,000/- for the death of their son Srinivasan in a road accident on 24.01.2009, when he was driving his motorcycle bearing Registration No.TN 10 D 0731 along with one Anandan as a pillion rider on the said vehicle. The said Anandan has filed M.C.O.P.No.22 of 2010 claiming compensation for a sum of Rs.5,00,000/- for the injuries sustained by him, against which, C.M.A.No.1984 of 2017 has been filed. For brevity, the appellant in both the appeals shall hereinafter be referred to as 'Insurance Company' and the respondents 1 and 2 in C.M.A.No.1983 of 2017 and the first respondent in C.M.A.No.1984 of 2017 shall hereinafter be referred to as 'claimants'.

3. On 24.01.2009 at about 2.00 p.m., the deceased Srinivasan was riding the motorcycle bearing Reg.No.TN 10 D 0731 along with first respondent in C.M.A.No.1984 of 2017 as pillion rider from Tindivanam to Avanipur. At that time, the driver of Innova Car bearing Reg.No.KA



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51 M 100 driving the said vehicle in a rash and negligent manner dashed against the motorcycle on the back side, thereby, the driver of the motorcycle died on the spot and the pillion rider sustained grievous injuries. Thereafter, the dependants of the deceased and the injured person filed claim petitions in M.C.O.P.Nos.449 of 2009 and 22 of 2010 claiming compensation of Rs.10,00,000/- and Rs.5,00,000/- respectively resulting in the award.

4. Before the Tribunal, the claimants have examined themselves as P.W.1 and P.W.2 and one Jeya as P.W.3 and the doctor as P.W.4 and marked Exs.A.1 to A.18. The respondents have examined one Magesh as R.W.1 and marked Exs.R.1 to R.5. After adjudication, the Tribunal by its common award dated 09.02.2012 awarded Rs.8,30,000/- and Rs.80,000/- respectively as compensation in respect of the death of the deceased and for the injuries sustained by the pillion rider. Aggrieved by the negligence and quantum of compensation fixed by the Tribunal, the Insurance Company is before this Court.

5. The learned counsel appearing for the appellant/Insurance



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Company submitted that, the accident had happened in broad day light and the driver of the motorcycle came from the back side and dashed against the Innova car, thereby, the accident had happened. However, without fastening negligence on the part of the deceased, the Tribunal had fastened the liability as against the appellant/Insurance Company and third respondent in C.M.A.No.1983 of 2017/owner of the Innova car, which is not sustainable. Further, he submitted that the compensation awarded by the Tribunal is highly excessive and the same is not on the basis of judgment of the Hon'ble Supreme Court in the case of ***National Insurance Company Limited Vs. Pranay sethi and others reported in 2017 (16) Supreme Court Cases 680***. On the sole ground, the award of the Tribunal is liable to be interfered with. Accordingly, he prays for allowing the appeals.

6. The learned counsel appearing for the claimants submitted that compensation awarded by the Tribunal is just and reasonable and after carefully considering all the oral and documentary evidence, the Tribunal had fastened the liability on the Insurance Company and the owner of the



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Innova car jointly and severally, which does not require any interference.

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7. This Court gave its careful consideration to the submissions advanced by the learned counsel appearing on either side and perused the materials available on record.

8. The factum and manner of the accident is not disputed by the parties. Therefore, this Court is not entering into the said aspect. However, the Insurance Company had challenged the liability fastened against them. After elaborately considering all the oral and documentary evidence, the Tribunal has passed an award based on the evidence of P.W.1 and P.W.2. For disproving the negligence on the part of the driver of the Innova car, the Insurance Company has not taken any effective steps to adduce evidence before the Tribunal. No eye-witness was examined before the Tribunal, but the insurance company examined their own Investigator. In the absence of any independent evidence, apart from the investigator of the Insurance Company, the Tribunal had fixed the liability on the driver of the vehicle Innova Car, which cannot be found fault with. Accordingly, on the question of negligence, the issue is



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answered against the Insurance Company.

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9. Now, coming to the question of compensation awarded by the Tribunal, this Court perused the common award passed by the Tribunal. Insofar as the compensation awarded in M.C.O.P.No.449 of 2009 is concerned, the Tribunal had fixed the notional income at Rs.6,000/- and awarded a sum of Rs.7,20,000/- as per the decision of the Constitution Bench in the case of *National Insurance Company Limited Vs. Pranay sethi and others* reported in **2017 (16) Supreme Court Cases 680**, which is not excessive and so also compensation awarded under the other heads is also just and reasonable. Thereby the quantum of compensation awarded for the death at Rs.8,30,000/- is just and reasonable. Insofar as the injuries suffered by the other claimant, the Tribunal, by adopting Rs.2,000/- per percentage of disability had awarded a sum of Rs.26,000/- by fixing the disability at 20%. Further, the compensation awarded under the other heads in M.C.O.P.No.22 of 2010 are also just and reasonable. By no stretch the compensation awarded in both the appeals could be said to be excessive or disproportionate. Therefore, this Court is not



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inclined to interfere with the common award passed by the Tribunal.

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M.DHANDAPANI, J.,

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10. Accordingly, these Civil Miscellaneous Appeals are dismissed and the judgment and decree dated 09.02.2012 made in M.C.O.P.Nos.449 of 2009 & 22 of 2010 on the file of the Motor Accident Claims Tribunal, (Sub Court), Tindivanam is confirmed. No costs. Consequently, the connected miscellaneous petitions are closed.

17.10.2023

Index : Yes / No

Speaking order / Non-speaking order

Neutral Citation Case : Yes / No

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To

1.The Motor Accident Claims Tribunal, (Sub Court), Tindivanam.

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



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