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C.M.A.No.3426 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 26.02.2024	Pronounced on: 07.06.2024
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CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.3426 of 2013
and M.P.No.1 of 2013

Bajaj Allianz General Insurance Company Limited,
Arts College Road, Coimbatore.

.. Appellants

Vs.

1.Niveditha

2.Gurusamy

3.Velammal

4.Ponnaiah

5.Shanmugam

6.The Oriental Insurance Company Ltd.,
3607/21, 2nd Floor, Sathiamoorthi Road,
Pudukottai – 622 001.

7.R.K.Electronics,
129-Priya Complex, Bilamedu, Coimbatore.

8.Rathinam



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9.Uthamaraj

.. Respondents

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(R2 died. RR 8 & 9 are brought on record as LRS of the deceased R2 viz., Gurusamy vide order of this Court dated 09.02.2024 made in C.M.P.Nos.18495 to 18497 of 2021 in C.M.A.No.3426 of 2013)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173(1) of the Motor Vehicles Act, 1988, to set aside the award made under the common judgment and decree dated 20.09.2012 made in M.C.O.P.No.32 of 2011 on the file of the Motor Accident Claims Tribunal, Sub Court, Udumalpet and dismiss the case entirely as against the appellant.

For Appellant : Mr.J.Michael Visuvasam

For RR 1 to 3 : Mr.N.Umapathi

For R6 : Mr.S.Arunkumar

For RR 4, 5 & 7 to 9 : No appearance

J U D G M E N T

This appeal has been filed by the appellant – Insurance Company against the judgment and decree dated 20.09.2012 made in M.C.O.P.No.32 of 2011 on the file of the Motor Accident Claims Tribunal, Sub Court, Udumalpet.



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Facts of the case:

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2.One Gunasekaran along with his family members travelled in a Maruti car from Pudukottai to Coimbatore on 12.09.2010 around 02.45 PM near the Bhavendar Bharathidasan Engineering College Pirivu road, the accident had taken place. The said Gunasekaran was driving the Maruti car after attending the Sathabiseka function at S.V.S.Thirumana Mahal. The said Gunasekaran and other relatives were returning from Pudukottai to Coimbatore. They travelled in the Maruti car bearing Registration No.TN 47 L 4646 in Trichy to Pudukottai National Highways No.210. At about 02.45 PM, when the car reached near Bhavendar Bharathidasan Engineering College Pirivu road, the lorry bearing Registration No.TCL 1179 coming from opposite direction driven by the driver Ponnaiah in a rash and negligent manner without adhering to traffic rules and regulations and he dashed against the car driven by the said Gunasekaran on the extreme left side of the road and due to which, the said Gunasekaran died on the spot as the car was dashed by the lorry and the car was completely damaged.

2(a).The driver of the lorry is Ponnaiah and the owner of the lorry is



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Shanmugam. The lorry is insured with Oriental Insurance Company Limited.

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2(b).The owner of the car is R.K.Electronics, Coimbatore and the car is insured with Bajaj Allianz General Insurance Company Limited. Hence, the claim petition has been filed by the claimants claiming a sum of Rs.30,00,000/- as compensation for the death of one Ramasamy.

3.In the said accident, 6 persons are reported dead and 9 persons are reported injured resulted in filing of 7 MCOPs. On the above 7 MCOPs, M.C.O.P.Nos.32 of 2011 & 33 of 2011 was disposed of by the learned Subordinate Judge, Udumalpet, on 20.09.2012 by common judgment, whereby the negligence is fixed on the part of both the driver of the car and driver of the lorry and accordingly liability of the Insurance Company of the car viz., Bajaj Allianz General Insurance Company Limited and the Insurance Company of the lorry viz., Oriental Insurance Company Limited was fixed at 50% : 50%.

4.The record reveals that as against the judgment passed in



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M.C.O.P.Nos.32 of 2011 & 33 of 2011 passed by the learned Subordinate Judge, Udumalpet, arising out of the very same accident, which was mentioned *supra*, wherein the Tribunal has held that the driver of both the lorry as well as the driver of the car are jointly and severally liable to pay the compensation and accordingly fixed 50% liability each and consequently, both the Oriental Insurance Company Limited and Bajaj Allianz General Insurance Company are jointly and severally liable to pay the compensation 50% each. As against this judgment, it appears that Oriental Insurance Company (Insurance Company of the lorry) has filed appeal in C.M.A.Nos.531 of 2019 & 540 of 2019.

5.This Court by common judgment dated 25.01.2019, dismissed C.M.A.Nos.531 of 2019 & 540 of 2019 filed by the Oriental Insurance Company Limited observing that the claimant/claimants filed the said claim petitions claiming a sum of Rs.15,00,000/- and Rs.30,00,000/- respectively as compensation for the death of one Rajamani and G.Ramasamy who died in the accident that took place on 12.09.2010. The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred due



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to rash and negligent driving by the 1st respondent, driver of the lorry belonging to the 2nd respondent and directed the respondents 3 and 5 each to pay 50% of the sum of Rs.10,70,000/- and Rs.22,35,000/- as compensation to the claimant/claimants respectively. The Tribunal considering the evidence of P.W.2, who had deposed that the accident occurred due to rash and negligent driving by the 1st respondent, driver of the lorry and Ex.P1-FIR filed against the 1st respondent and in the absence of any evidence to disprove the contention of the claimant/claimants, held that the accident occurred due to rash and negligent driving by the 1st respondent and confirmed the finding of the learned Subordinate Judge, Motor Accident Claims Tribunal, Udumalpet, that the accident has taken place due to rash and negligent driving of the driver of both the vehicles viz., car and lorry and also held that both the Insurance Company are jointly and severally liable to pay the compensation at the rate of 50% each and the finding that Insurance Company of the lorry viz., Oriental Insurance Company Limited is directed to pay the compensation to the claimants at the first instance and recover the same from the owner of the lorry, which was granted has been confirmed.



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6.After perusing the judgment passed by this Court on 25.01.2019 in

C.M.A.Nos.531 & 540 of 2019, which were filed at the instance of one of the Insurance Company of the two of the vehicles involved in the accident, namely the Oriental Insurance Company for the lorry and Bajaj Allianz General Insurance Company Limited for the car, wherein 50% contributory negligence has been fixed as against driver of each of the vehicle and after perusing the common judgment dated 25.01.2019, I do not find any valid reason to take a different view on the matter.

6(a).Hence, I find that the order passed by the Tribunal in M.C.O.P.Nos.32 of 2011 & 33 of 2011 which was confirmed by the common judgment of this Court in C.M.A.Nos.531 of 2019 & 540 of 2019, is squarely applicable to C.M.A.No.3426 of 2013 for the Insurance Company of the car and lorry and hence, I find no merits in the said appeal filed by the Insurance Company of the car viz., Bajaj Allianz General Insurance Company Limited on the pointum of negligence and liability thereof and after perusing the quantum of compensation awarded by the Tribunal, I find that the Tribunal has rightly arrived on the multiplier and also deducted 1/3rd deduction towards



personal expenses and followed the decision of the Hon'ble Apex Court

reported in **2009 (2) TNMAC 1 SC Supreme Court, [Sarla Verma & others**

Vs. Delhi Transport Corporation & another] and also granted loss of love and affection and hence, the quantum of compensation awarded by the Tribunal in this appeal is just and fair and does not warrant any interference at the appellate stage. Accordingly, this appeal stands dismissed.

7.In the result, this Civil Miscellaneous Appeal is dismissed and a sum of Rs.22,35,000/- awarded by the Tribunal as compensation to the respondents 1 to 3 / claimants, along with interest and costs is confirmed. The appellant (Bajaj Allianz General Insurance Company Limited) is directed to deposit a sum of Rs.11,17,500/- (being 50% of the award amount) along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P.No.32 of 2011 on the file of the Motor Accident Claims Tribunal, Sub Court, Udumalpet. The 6th respondent (Oriental Insurance Company Limited) is directed to deposit a sum of Rs.11,17,500/- (being 50% of the award amount), along with interest and costs, less the amount already



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deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P.No.32 of 2011 on the file of the Motor Accident Claims Tribunal, Sub Court, Udumalpet, at the first instance and recover the same from the 5th respondent – owner of the lorry. On such deposit, the respondents 1 to 3 / claimants are permitted to withdraw their respective share of the award amount as per the ratio of apportionment made by the Tribunal, along with proportionate interest and costs, after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal. Pending appeal, 2nd respondent died and the legal heirs of the 2nd respondent are brought on record as respondents 8 & 9 in this appeal. The respondents 8 & 9 are permitted to withdraw the respective share of the deceased 2nd respondent by filing necessary applications before the Tribunal. Consequently, the connected Miscellaneous Petition is closed. No costs.

07.06.2024

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Index : Yes / No

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RMT.TEEKAA RAMAN, J.

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To

1.The Subordinate Judge,
Motor Accident Claims Tribunal,
Udumalpet.

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

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