



CMA No.1361 of 2023
and C.M.P.No.13616 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.09.2024

CORAM:

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

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and
C.M.P.No.13616 of 2023

The Bajaj Allianz General Insurance Company Limited,
Subramaniam Building, 2nd Floor, No.1, Club House Road,
nos.497, 498, 5th Floor, Isana Kattina Building,
Poonamallee High Road, Arumbakkam,
Chennai - 600 106.

... Appellant

Vs.

1.Venmathi

2.A.Thalapathi

3.A.Muthamizh

4.M/s. International Tractor Limited,
No.54/2A1, Janpanchathiram Koot Road,
G.N.T.Road, Chennai - 600 067.

... Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Award dated 30.06.2022 in M.C.O.P.243 of 2013 on the file of the Motor Accident Claims Tribunal, Ponneri (In the Court of IV Additional District and Sessions Judge), Thiruvallur at Ponneri).



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For Appellant : Mr.T.K.Premkumar

For RR1 to 3 : Mr.R.Venkatesulu

For R4 : Mr.A.V.Arun

J U D G M E N T

The appellant, the Bajaj Allianz General Insurance Company Limited, Chennai, the second respondent in M.C.O.P.243 of 2013 on the file of the Motor Accident Claims Tribunal, Ponneri, has filed the present appeal.

2. The respondents 1 to 3 filed the above said claim petition under Section 166 of the Motor Vehicles Act seeking compensation of Rs.7,00,000/- for the death of one Anandhakumar (the husband of first claimant and father of claimants 2 and 3), in a road accident that took place on 19.12.2007.

3. The brief case of the claimants is as follows:

On 19.12.2007, Anandhakumar (since deceased) was



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walking along G.N.T. Bypass Road, Red hills and at about 8.00 p.m. a Tractor (not registered) bearing Engine Number A97998 and Chassis Number DSAY - 68459/3 belonging to the fourth respondent herein, hit him, resulting in his instantaneous death.

4. According to the claimants the rash and negligent driving of the driver of the tractor was the cause of the accident and that since the said vehicle was insured with the present appellant, the Bajaj Allianz General Insurance Company Limited, the owner of the Tractor (fourth respondent) and the insurer are jointly and severally liable to pay compensation to them.

5. In the Tribunal, the owner of the tractor remained absent and was set *exparte*. The appellant, the Bajaj Allianz General Insurance Company Limited contested the claim petition.

6. The Tribunal after analysing the evidence on record, fastened negligence on the part of the driver of the tractor (not registered)



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and directed the appellant, Insurance Company to pay compensation of Rs.10,59,420/- to the claimants together with interest at the rate of 7.5% per annum from the date of petition till the date of realisation, vide its orders dated 30.06.2022. The Tribunal also held that the liability of the owner of the tractor and the insurer are joint and several.

7. Questioning their liability to pay compensation, the present appeal is filed by the appellant / the Bajaj Allianz General Insurance Company Limited.

8. Heard Mr.T.K.Premkumar, learned counsel appearing for the appellant, Mr.R.Venkatesulu, learned counsel appearing for the respondents 1 to 3 and Mr.A.V.Arun, learned counsel appearing for the fourth respondent.

9. Mr.T.K.Premkumar, learned counsel appearing for the appellant drew the attention of this Court to the Insurance Policy (Ex.R1) and contended that the owner of the tractor had taken only Marine



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Insurance Policy which would not cover the death of a third party.

According to him, the owner of the tractor had taken out the tractor illegally from the consignment. He therefore, prayed for exonerating the liability of the Insurance Company from paying the compensation amount as directed by the Tribunal.

10. Per contra Mr.R.Venkatesulu, learned counsel appearing for the claimants and Mr.A.V.Arun, learned counsel appearing for the owner of the tractor contended that the Marine Insurance Policy would cover Inland Transit (Rail or Road) and all risks and therefore, the appellant, Insurance Company is liable to pay compensation.

11. A perusal of the records shows that the present appellant had taken a specific plea in its counter that since the policy of insurance (Ex.R1) is a Marine Policy, the same would not cover the third party claim. The Marine Insurance normally covers the loss or damage of ships, cargo, terminals, and any transport by which the property is transferred, acquired, or held between the points of origin and the final destination. In



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the instant case, the tractor has been taken out of the consignment illegally by the owner of the tractor and the accident occurred due to rash and negligent driving of the tractor. Moreover, the owner of the tractor, before taking the tractor outside the yard, had not taken Trade Plate Policy which would have covered the third party risks. Thus, the owner of the tractor had committed an illegal act and therefore, the appellant Insurance Company cannot be made liable to pay compensation. The policy of insurance (Ex.R1) also shows that the Marine Insurance Policy has been taken by the owner of the tractor for protecting the goods during transportation by Rail or Road. The Tribunal without adverting its attention to the policy of insurance, had directed the appellant Insurance Company to pay the Award amount which is liable to be set aside. The claimants had not questioned quantum of compensation awarded by the Tribunal.

12. A perusal of the records shows that the Tribunal had passed just compensation. Since the Bajaj Allianz General Insurance Company Limited is not liable to pay compensation to the claimants the owner of the tractor namely, M/s. International Tractor Limited, Chennai,



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is directed to pay the entire award amount to the claimants.

13. In the result,

i. The Civil Miscellaneous Appeal is allowed. No costs.

Consequently, connected Civil Miscellaneous Petition is closed.

ii. The quantum of compensation awarded by the Tribunal is upheld.

iii. The owner of the Tractor, namely, M/s. International Tractor Limited, Chennai, is directed to pay compensation i.e. Rs.10,59,420/- to the claimants together with interest at the rate of 7.5% per annum from the date of claim petition till the date of realisation, within a period of four weeks from the date of receipt of a copy of this order / uploading of this order to the credit of M.C.O.P.243 of 2013 on the file of the Motor Accident Claims Tribunal, Ponneri (In the Court of IV Additional District and Sessions Judge), Thiruvallur at Ponneri.



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iv. On such deposit being made, the respondents 1 to 3 / claimants are at liberty to withdraw the same as per the orders passed by the Tribunal after following due process of law. The ratio of apportionment made by the Tribunal shall be kept intact.

v. The appellant, Insurance Company is exonerated from paying the compensation amount and they are at liberty to withdraw the compensation amount, if already deposited by them.

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Index : Yes/No
Speaking / Non-speaking order
mtl



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To

1. The Motor Accident Claims Tribunal,
Ponneri (In the Court of IV Additional District and Sessions Judge),
Thiruvallur at Ponneri).
2. The Section Officer, VR Section, Madras High Court, Chennai.

R. HEMALATHA, J.



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