



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 19.01.2024	Pronounced on 07.03.2024
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CORAM:

THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

C.M.A.Nos.783 & 784 of 2017

Bajaj Aliance General Insurance Co.Ltd.,
"Prince Towers"
Ground Floor, No.25/26.
College Road, Nungambakkam,
Chennai - 600 034.

...Appellant in both C.M.As.

Vs.

1. K.Arunachalam (Died)

2. P.Selvam

3. Mariayie

4. Karpagam

5. Thavamani

6. Satheeshkumar

...Respondents in C.M.A.No.783 of 2017

1. Vellaisamy

2. P.Selvam

...Respondents in C.M.A.No.784 of 2017



Common Prayer: Appeals filed under Section 173 of Motor Vehicles Act, 1988 against the award and decree dated 27.04.2010 made in M.C.O.P.No.935 & 958 of 2006 on the file of the Motor Accidents Claims Tribunal, II Court of Small Causes, Chennai.

For Appellant	: Mr.S.Arunkumar (In both C.M.As.)
For R1	: Died
For R2 to R6	: No appearance. (In C.M.A.No.783 of 2017)
For R1	: Died
For R2	: No appearance (In C.M.A.No.784 of 2017).

COMMON JUDGMENT

Parties are referred to as per their rank in the claim petitions for the sake of convenience.

2. The Insurance Company is the appellant in both the cases challenging the award passed in M.C.O.P.Nos.935 & 958 of 2016 filed by one Arunachalam and Vellaichamy, who had filed the respective claim petitions seeking compensation for the accidental injuries sustained by them on 15.11.2004.



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3. The claim petitioners in both the cases have filed the above respective M.C.O.Ps. alleging that on 15.11.2004 at about 19.30 hours, while the claim petitioners were walking along the E.C. Road, Krishnankaaranai, near Saibaba Koil, Kanchi District, at that time, the rider of TVS XL bearing Reg.No TN 21 P 2729, which was proceeding from North Nemili towards Mahabalipuram, drove the same in a rash and negligent manner endangering public safety and hit against the claim petitioners. As a result, the claim petitioners sustained greivous injuries all over the body.

4. The second respondent/Insurance Company filed counter affidavit alleging that during the investigation, it was revealed that the insured, P.Selvam, (second respondent herein) was taken to the Government Hospital, Chengalpet for treatment of facial injuries sustained during the alleged accident along with the claim petitioners on the same date and that the concerned hospital records revealed the same. The driver- in-charge at the time of the alleged accident has been mentioned as one Palayam. As the investigation revealed that the people in that locality have also confirmed that the rider of the TVS XL had sustained facial injuries, it is evidently clear that Selvam, the insured was driving the TVS



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XL and as he did not hold a valid driving licence, the name of one Palayam has been substituted in order to enable the claim petitioners in both the cases to file claim petitions against the insurer. The investigation further revealed that neither the claim petitioners in both the cases identified the vehicle that hit them nor could the people gave any description of the vehicle, which makes it evidently clear that the vehicle in question (TVS XL bearing Reg.No. TN 21 P 2729) has been swapped in the place of another. It is also pertinent to note that it is not possible for the TVS XL to have caused such grievous injuries as claimed by the claim petitioners.

5. During the trial, the claimants have examined themselves and joint trial was taken and joint evidence has been recorded. P.W.1 to P.W.4 were examined and Exs.P1 to P7 were marked. On behalf of the Insurance Company, the investigation officer was examined as R.W.1 & Senior Legal Executive was examined as R.W.2 and Exs.R1 to R3 were marked.

6. Based upon both the oral and documentary evidence, the Tribunal has come to the conclusion that the factum of the accident is established and also stated that the claimants are entitled for compensation and accordingly,



awarded a sum of Rs.4,84,000/- and Rs.71,000/- to the claim petitioners in M.C.O.P.Nos.935 & 958 of 2016 respectively.

7. Aggrieved by the award, the appeals have been filed by the second respondent/Insurance Company.

8. The learned counsel for the second respondent/Insurance Company contended that involvement of the vehicle in the accident is doubtful. The complaint has been lodged with CBCID and the investigation carried on by the R.W.1 revealed that the vehicle identified by the claim petitioners which has hit them is different and the vehicle which met with an accident in the claim petitions is different. It is a specific plea taken by the Insurance Company.

9. After hearing the learned counsel for the petitioner, after perusing the lower Court records and also the findings rendered by the trial Court, I find that the Tribunal has not properly appreciated the evidence of R.W.1. It is the specific evidence of R.W.1 that the insured P.Selvam was driving the Motor cycle TVS XL Suzuki bearing Reg.No.TN-21-P27-29 at the time of accident and there was no pillion rider. One Palayam was the driver at the time of the



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accident and that was suppressed. The evidence of R.W.1 was not properly appreciated by the Tribunal. After perusing the evidence of R.W.1 and the answer registered from the cross examination of P.W.2., I am inclined to hold that the finding rendered by the Tribunal has to the identification of the vehicle that had caused the accident and involvement of the vehicle in the accident are being questioned and there is no positive evidence to show the involvement of the present vehicle, against which, M.C.O.Ps were filed. Hence, this Court is inclined to interfere with the award passed by the Tribunal and the award passed in both the cases is hereby set aside.

10. The matter is remitted back to the II Judge (MACT) Court of Small Causes, Chennai. It is open to both the parties to adduce the additional evidence, if any, to show and demonstrate the manner of the accident as projected by the claims Tribunal. It is also open to the Insurance Company to dispute the involvement of the vehicle and thereupon, the Tribunal is directed to dispose of the case in the manner known to law.

11. Accordingly, these civil miscellaneous appeals are allowed as indicated above. No costs.



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07.03.2024

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Index : Yes/No

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Neutral Citation: Yes/No

Speaking Order: Yes/No

To

The Motor Accidents Claims Tribunal, II Court of Small Causes, Chennai.



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RMT.TEEKAA RAMAN.J.

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Judgment made in
C.M.A.Nos.783 & 784 of 2017

Dated: 07.03.2024