IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.11.2024

CORAM:

THE HONOURABLE MR.JUSTICE **M.DHANDAPANI**

CMA.Nos.4590 of 2019 and 778 & 782 of 2020
and
CMP.Nos.26056 of 2019 and 4893 & 4899 of 2020

CMA.No.4590 of 2019:

Bajaj Allianz Insurance Co. Ltd.,
Rep. by its Manager
G.E. Plaza, Airport Road,
Yerwada, Pune – 411 006 ...Appellant

Vs.

1. Shanthi

2. Minor Nevetha
   Rep. by her mother Shanthi

3. Minor Ajith
   Rep. by his mother Shanthi

4. Alamelu

5. Kandasamy

6. Mohan Kumar

7. M/s Shriram General Insurance Company Limited ,
   Rep. by its Manager,
   421016 – VCTV Main Road,
   Sathi Road, Erode – 638 003.

8. H.A.Sundar ...Respondents

CMA.No.778 of 2020:

M/s. Shriram General Insurance Co. Limited,
Rep. by its Manager,
421016 – VCTV Main Road,
Sathi Road, Erode – 638 003. …Appellant

Vs.

1. Merry Cathirin

2. Minor Annasweetie

3. Minor Cliperd Navis
   (2nd and 3rd Respondents are minors and represented by their next friend/mother, the 1st respondent)

4. Rajamma

5. Muthusamy

6. Mohan Kumar

7. H.A.Sundar

8. Bajaj Allianz Insurance Co. Ltd.,

Rep. by its Manager,
G.E.Plaza, Airport Road,
Erwada, Pune – 411 006 …Respondents

CMA.No.782 of 2020:

M/s. Shriram General Insurance Co. Limited,
Rep. by its Manager,
421016 – VCTV, Main Road,
Sathi Road, Erode – 638 003. …Appellant

Vs.

1. Santhi
2. Minor Nivetha
3. Minor Ajith
   (2nd and 3rd respondents are minors and
   are rep. by their next friend/mother, the 1st respondent)
4. Alamelu
5. Kandasamy
6. Mohan Kumar
7. H.A.Sundar
8. Bajaj Allianz Insurance Co.Ltd.,
   Rep. by its Manager,
   G.E.Plaza, Airport Road,
   Erwada, Pune – 411 006. …Respondents

Common Prayer: Civil Miscellaneous Appeals filed under Section 173 of Motor Vehicles Act, 1988, as against the decree and Judgment dated

30.10.2015 passed in MCOP.Nos.532 & 572 of 2011 respectively by the Hon'ble Motor Accidents Claims Tribunal (IV Additional District Judge), at Bhavani, Erode District.

In CMA.No.4590 of 2019:

For Appellant : Mr.J.Michael Visuvasam

For Respondents : Mr.C.Kulanthaivel, for R1 to R5
: Mr.S.Dakshnamoorthy, for R7
: No Appearance, for R6
: Notice not ready, for R8

In CMA.No.778 of 2020:

For Appellant : Mr.S.Dakshnamoorthy

For Respondents : Mr.C.Kulanthaivel, for R1 to R3
: Mr.J.Michael Visuvasam, for R8
: Notice not ready (refused), for R6
: Notice not ready, for R4, 5 & 7

In CMA.No.782 of 2020:

For Appellant : Mr.S.Dakshnamoorthy

For Respondents : Mr.C.Kulanthaivel, for R1 to R5
: Mr.J.Michael Visuvasam, for R8
: Notice not ready (refused), for R6
: Notice not ready, for R7

COMMON JUDGEMENT

Since all these appeals are arising out of the very same accident, they are disposed of by way of this common judgment.

2. Challenging the common award made in MCOP.Nos.532 & 572 of 2011 dated 30.10.2015, on the file of the Motor Accident Claims Tribunal (IV Additional District Judge), Bhavani, Erode District, the respective insurer have come up with these appeals.

3. For the sake of convenience, the parties are referred to in the same array as they were arrayed in CMA.No.4590 of 2019.

4. The respondents 1 to 5 in both the appeals in CMA.No.4590 of 2019 and 778 of 2020 are claimants. It is the case of the respective claimants that, on 12.09.2011 at about 11.15 am., when the deceased persons namely Saravanan and Daniel Julius were travelling in the TATA Indika car bearing Regn.No.KA-01-B-2930 owned by the 8th respondent insured with the appellant and when they were proceeding in Kovai to Salem NH 47 Road, near Sellappampalayam Privu, as the Lorry bearing Regn.No.TN-34-F-5811 owned

by the 6th respondent insured with the 7th respondent was parked recklessly in the middle of the road, the appellant insured car dashed against the rear side of the said lorry, due to which, the said Saravanan and Daniel Julias sustained grievous injuries and succumbed to the same. Thereby, the respective claimants filed respective claim petitions in MCOP.Nos.532 & 572 of 2011 claiming compensation of Rs.20,00,000/- and Rs.50,00,000/- respectively. Before the tribunal, four witnesses viz., P.W.1 to P.W.4 were examined on the side of the claimants and marked Exs.P.1 to Ex.P.15 and three witnesses viz., R.W.1 to R.W.3 were examined on the side of the respondents therein and marked Exs.R.1 to R12. After adjudication, the Tribunal awarded a sum of Rs.17,17,000/- and Rs.16,27,000/- respectively towards compensation and fixed 50% - 50% negligence on both the vehicle and directed the respective owner and insurer to jointly and severally pay the said amount in favour of the respective claimants. Challenging the same, the respective insurer have come up with these appeals.

5. Learned counsel for appellant/Bajaj insurance company submitted that, admittedly the criminal case was registered as against the driver of the appellant insured vehicle and it is not disputed that, neither the appellant/

insurer of the car in which the deceased persons have travelled at the time of accident nor the insurer of the offending lorry had examined any independent witness to depose the manner in which the accident had taken place. However, the mere fact that the FIR came to be registered as against the deceased Saravanan, the driver of the appellant insured vehicle cannot be a ground to fix 50% liability as against the appellant and the above said accident took place solely due to the negligent act of the driver of the offending lorry who parked the lorry on the road without any sign board and due to which, two persons have lost their life. While so, fixing 50% negligence on the part of the appellant is wholly unsustainable.

6. Per contra, the learned counsel appearing on behalf of the 7th respondent/Shriram Insurance Company submitted that, the above said accident had taken place solely due to the rash and negligent driving on the part of the driver of the appellant insured car and thereby, the law enforcing agency registered a criminal case as against the deceased Saravanan/driver of the appellant insured vehicle. Further, the 7th respondent examined its driver as RW1 who narrated the manner in which the accident had taken place wherein it

was deposed that the Lorry insured with this respondent was parked in the extreme side of the road and the driver of the appellant insured vehicle is the one who drove the vehicle in rash and negligent manner and dashed against the rear end of the parked vehicle, thereby the entire negligence is on the part of the driver of the appellant insured vehicle. While so, the Tribunal had fastened 50% negligence on the part of the Shriram Insurance Company, which is not sustainable. Accordingly, he prayed for appropriate orders.

7. Learned Counsel appearing on behalf of the respective claimants submitted that, mere fact that the FIR came to be registered as against the deceased Saravanan, who drove the appellant insured car cannot be held against the claimants to refuse compensation, since, taking advantage of the death of the said Saravanan, the driver of the 7th respondent insured vehicle gave a false complaint, which cannot be acceded to and the tribunal, after careful consideration of the material documents placed before it, had passed the present award fixing 50-50 negligence on the both the insurance companies, which does not require any interference.

8. Heard the learned counsel appearing on either side and perused the materials available on record.

9. The factum of accident is not in dispute. It is only the manner in which the accident had happened leading to the fastening of negligence, which has been put in issue. However, it is to be pointed out that no independent witness has been examined by either of the insurer to establish their case. It is not as if the accident had happened in a secluded place. Such being the case, the fastening of negligence equally on both the insurer cannot be found fault with, as the Tribunal has deliberated on all the materials while arriving at the said decision and, therefore, no interference is warranted with the same.

10. It is the major claim of the appellant/Bajaj Insurance that even if the car driver is at fault, as seen from the FIR, the driver being engaged and the accident had happened in the course of duty, necessarily the claim has to be made under the Employees Compensation Act and not under the Motor Vehicles Act and the petition has to be converted accordingly and the issue has to be deliberated.

11. Though such a stand is taken, irrespective of the conversion of the compensation into one under the Employees Compensation Act, necessarily the insurer has to compensate the claimants by indemnifying the insured and in such view of the matter, the appellant/Bajaj Insurance has to necessarily honour the workmen's compensation claim by paying the claimants. That being the resultant position, though this Court has powers to convert the claim from one under the Motor Vehicles Act to one under the Employees Compensation Act, no useful purpose would be solved by such a conversion, as in that case as well, the compensation has to be necessarily borne by the insurer.

12. Therefore, in balancing equity between all the parties to the *lis* and also considering the fact that the accident had happened in the year 2011 and almost a decade and a half has passed as of now, this Court is not inclined to adopt such an exercise of conversion, as it would be detrimental to the claimants and the benevolence extended through the legislation would get defeated. In such view of the matter, this Court is inclined to confirm the award by dismissing the appeals.

13. Accordingly, these Civil Miscellaneous appeals filed by the respective insurer stand dismissed, confirming the impugned common award dated 30.10.2015 passed in MCOP.Nos.532 & 572 of 2011 and the appellant and the 7th respondent are directed to deposit their respective share of compensation awarded by the tribunal to the credit of respective MCOP's along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and costs as awarded by the Tribunal, less, the amount, if any already deposited, within a period of four (4) weeks from the

date of receipt of a copy of this judgment. On such deposit being made, the Tribunal is directed to transfer the compensation amount apportioned in respect of the respective major claimants directly to their bank accounts through RTGS within a period of two (2) weeks thereafter. Insofar as the apportionment of compensation in favour of the minor claimants is concerned, the Tribunal is directed to invest the same in an interest bearing fixed deposit initially for a period of three years to be renewed till they attains majority and the quarterly interest accrued thereon shall be paid to the respective guardian of the minor claimants for being used for the welfare of the minor claimants. No costs. Consequently, the connected Miscellaneous petitions are closed.

12.11.2024

skt

Index	: Yes / No
Speaking Order	: Yes / No
NCC	: Yes / No

To:

1. The Motor Accidents Claims Tribunal
   (IV Additional District Judge),
   Bhavani, Erode District.

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

M.DHANDAPANI, J.

skt

CMA.Nos.4590 of 2019 and 778 & 782 of 2020
and
CMP.Nos.26056 of 2019 and 4893 & 4899 of 2020

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