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C.M.A.No.370 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.11.2024

CORAM :

THE HONOURABLE MR. JUSTICE M. DHANDAPANI

C.M.A.No.370 of 2020

and

C.M.P.No.2392 of 2020

R.Gopal

... Appellant

Vs.

1. Ayyammal

2. Maheswari

(The 2nd respondent is suo motu declared as major vide order dated 11.11.2024 in CMA.No.370 of 2020)

3. Periyathambi

4. Chinnakolandai

5. P.Subramaniam

6. C.Mohanraj

7. S.Gowri

8. Minor Rajendran

9. The New India Assurance Co-Ltd.

Kumaran Shopping Complex,

Kumaran Road,

Tiruppur – 641 001.

... Respondents

Prayer:Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 28.08.2008 made in M.C.O.P.No.984 of 1999 on the file of the Motor Accident Claims Tribunal / First Additional Sub Court, Erode.



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For Appellant : Mr.N.Manokaran

For Respondents : Mr.J.Chandran for R9
No appearance for R7
R1 to R6, R8 – Not ready in
notice

JUDGMENT

The owner of the car which was not insured and which was involved in an accident in which the victim died on the spot has filed this appeal, challenging the award of the Tribunal saddling him with liability to pay compensation.

2. The facts herein for filing of this appeal are as follows:

On 30.09.1997 at about 8 am, husband of the first claimant, was walking along Salem Sankagiri Road. At that time, the car owned by the second respondent in the claim petition, driven by first respondent, came from the opposite side in a rash and negligent manner and dashed against the victim, who died on the spot. A case was registered in Attayampatti Police Station in Cr.No.486/97 for offences under Section 279, 304(a) IPC. Contending that the accident had happened due to the rash and negligent driving of the car by the



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first respondent, the claimants have filed claim petition in M.A.C.T.O.P.No.984 of 2014 on the file of Motor Accidents Claims Tribunal / First Additional Sub Court, Erode seeking compensation a sum of Rs.4,00,000/- for the death of the deceased.

3. The claim petition was filed by the wife, daughter, parents and brother of the victim. The claim petition was opposed by the driver and owner of the vehicle who were arrayed as respondents 1 and 2, one Gowri who claim to be wife of the deceased, arrayed as R3 and her minor son, R4 and the insurance company.

4. The owner of the car / appellant herein, filed the counter contending that the claimants are not related in any way to the deceased. The third respondent in the claim petition namely Gowri had filed an original petition to declare the deceased as her husband before the Family Court at Erode. Therefore the appellant contended that the entire claim petition is a make believe claim and has to be rejected.

5. The Insurance company filed a counter contending that Insurance cover was only for the period between 24.11.1995 and 23.11.1996. The date of



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accident was 30.09.1997 and on that day, there was no live policy cover.

Therefore, they are not liable to pay compensation.

6. The 7th respondent herein Gowri filed a counter stating that she is a legally wedded wife of the deceased and the minor and the 8th respondent herein was born to her and the deceased. The said Gowri took strong exception to the claim petition and contended that the claimants are not related to the deceased in any way and the claim petition was filed solely to enjoy the bounty.

7. On the side of claimants, 6 documents were marked and on the side of respondents 2 documents were marked. The learned Tribunal on analysis of both oral and documentary evidence, framed certain points for determination like:

(i) Whether the accident happened due to the negligent driving of the Driver of the car;

(ii) Whether the claimants have proved the relationship with the deceased;

(iii) Whether said Gowri who claims to be the wife of the deceased has proved her relationship and ;

(iv) In what manner the claimants are entitled to share the compensation



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amount.

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8. The father of the deceased, the third claimant in claim petition was examined as P.W.1, he deposed that the deceased was his son and the first claimant was his daughter-in-law. However, during cross examination he admitted that he has not witnessed the accident taken place. P.W.2 is the eye witness. However, he has denied giving police complaint and fairly admitted that he was not examined by the police. Therefore, the Tribunal did not place reliance on his evidence to conclude as to who was at fault.

9. The driver of the vehicle was examined as R.W.1 in his evidence he has stated that the victim crossed the road suddenly and because of the sudden crossing of the victim he could not control the vehicle and he had no other alternative than dashing against the victim.

10. According to R.W.1, he was the one who lodged the police complain, however in the complainant claim, according to R.W.1, the Police had wrongly entered the name of the complainant as one Madappan. Therefore, the Tribunal concluded that since the driver himself submitted that the accident had happened only because of him, fixed the negligence on the driver of the car.



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11. Now coming to the owner of the party who should bear the liability to pay the compensation, the Tribunal took into account the contention raised by the Insurance company that there was no valid policy cover on the date of accident. The claimant has produced the policy cover. However, that was only for the period between 24.11.1995 and 23.11.1996. The date of the accident was on 30.09.1997 as rightly contended by the insurance company on the date of accident, the vehicle was not protected by any insurance cover. Therefore, the Tribunal concluded that the owner of the vehicle, namely appellant herein was liable to pay the compensation.

12. At the time of his death, the victim was aged about 25 years. It is the evidence of P.W.1 that the deceased was a Weaver by profession and earning a sum of Rs.3,000/- per month. However, no evidence was produced before the Tribunal to show that he was earning Rs.3,000/-. Hence, the Tribunal fixed the monthly income at Rs.2,500/- and adopted multiplier of 18. The Tribunal deducted 1/3rd of same and fixed the loss of income at Rs.3,60,000/- and the other heads awarded by the Tribunal are also just and reasonable.

13. Next the Tribunal went on to discuss, the disputed relationship



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between the claimants and deceased vis-a-vis Gowri and the deceased.

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14. The Father of the deceased has entered into the witness box and he has deposed his evidence. He has admitted that the first respondent herein was legally wedded to his son. He has also produced the marriage invitation. The marriage is said to have taken up on 10.02.2005. The father of the deceased has also deposed that first respondent herein was little mentally unstable.

15. P.W.1 has also produced the voters list to prove the relationship. In the voters list, the name of Sellappan is found and his father's name is mentioned as Periya Thambi. Therefore, the Tribunal accepted the relationship between the parties and rejected the counter claim raised by Gowri. It is pertinent to note here that the said Gowri has filed an original petition before the Family Court to declare the deceased as her husband. The same was taken on file in H.M.O.P.No.1182 of 1997. However, the Gowri did not prosecute the said original petition and ultimately it was dismissed for default. The learned Tribunal has also taken into account, the said fact and concluded that the said Gowri has not proved her relationship with the deceased.

16. The brother of the deceased shown as the fifth claimant. The learned



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Tribunal has left out claimants 3 and 5, father and brother of the deceased respectively. The Tribunal awarded compensation only to the Class I heir namely wife, child and mother of the deceased. Considering the occupation and age of the deceased, this Court holds that the Tribunal was perfectly justified in awarding the said compensation. Since no cross appeal was filed by the claimants, the awarded amount is sustained.

16. When the claim petition was filed in the year 1999, the second respondent was aged about 17 years. Now, the second respondent should be aged about 43 years and is therefore, major. Though no application has been taken out to declare her as major, this Court *suo motu* takes into account the age given in the claim petition and also taking into account the efflux of time, declares the second respondent as major and discharges her mother namely Ayyammal from the guardianship. The Registry shall carry out the necessary amendments.

17. Since there was not valid insurance cover on the date of accident, the appellant is liable to pay the compensation to the claimants. In result, the appeal is dismissed, confirming the award passed by the tribunal in M.C.O.P.No.984 of 1999 dated 28.08.2008 and the appellant is directed to deposit the



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compensation of **Rs.3,47,000/-** awarded by the tribunal to the credit of M.C.O.P.No.984 of 1999 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 six weeks (6) from the date of receipt of a copy of this judgment, if not already deposited. On such deposit being made, the Tribunal is directed to transfer the said amount to the respondents 1, 2 and 4 directly to their bank account through RTGS within a period of two (2) weeks thereafter. There shall be no order as to costs in this appeal. The compensation amount shall be apportioned among the claimant as per the order of the Tribunal. No costs. Connected miscellaneous petition is closed.

11.11.2024

Index : Yes / No
Netrual Citation Case : Yes / No
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To

1. Motor Accident Claims Tribunal / First Additional Sub Court, Erode.
- 2.The Section Officer, V.R.Section, High Court, Madras.



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M.DHANDAPANI, J.

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