IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.10.2015

CORAM

THE HON'BLE MR.JUSTICE C.S.KARNAN

C.M.A.No.463 of 2014

Order Reserved on 29.09.2015   Judgment Pronounced on 12.10.2015

1.Mrs.Chitra Goyal
2.Abhishek A. Goyal
3.Adeesh Goyal .. Appellants/Petitioners

vs

1. S.Premkumar

2. The New India Assurance Co. Ltd.,
No.45, Moore Street,Chennai-600001...Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 18.09.2013 passed in M.C.O.P.No.5146 of 2011, on the file of the III Judge, Small Causes Court (Motor Accidents Claims Tribunal), Chennai and praying to set aside the same.

For Appellants : Mr.UM.Ravichandran
For Respondents: Mr.S.R.Sumathy (for R2)
R1 - No Appearance

JUDGMENT

On 01.06.2010, at about 01.00 p.m., when the (deceased) Ashok Kumar Goyal was riding his motorcycle bearing Registration No.TN-07-AT-0275, on the Muthusamy Salai, the Van bearing Registration No.TN-22-AJ-1638, driven by its driver in a rash and negligent manner dashed against him. As a result, the (deceased) had succumbed to his injuries, in spite of medical treatment. Hence, the legal heirs of the deceased had filed the claim against the owner and insurer of the offending vehicle.

2.In the said case, the respondents have not filed counter statement, even after receiving notice from the Court. The claimants had filed proof affidavit and two witnesses were examined and 29 documents were marked. After recording the evidence of the witnesses and on perusing the proof affidavit including exhibits, the Tribunal had granted compensation of a sum of Rs.59,64,250/- with interest at the rate of 7.5% per annum. Not being satisfied with the quantum of compensation, the claimants have filed the above appeal and sought additional compensation of a sum of Rs.5,00,000/- with interest.

3.The learned counsel appearing for the claimants submits that the claim petition had been levelled on 30.05.2011 and notice were served on the respondents. After receiving the said notice, no one appeared before the Tribunal. The Tribunal also had granted sufficient time for the respondents for their appearance and counter statement, but in spite of this no one appeared. Hence, the main O.P. was posted for claimants' evidences. The first claimant and eyewitness have filed proof affidavit on 29.08.2013 and also recorded their evidences and 24 documents were marked. After recording the evidence of the witnesses and on perusing the exhibits marked by the claimants, the Tribunal had granted the impugned award. The learned counsel further submits that the (deceased) underwent medical treatment from 01.06.2010 to 30.12.2010 i.e. till his death at Appollo Hospital. The claimants had spent more than Rs.20,00,000/- towards medical expenses. To that effect, the claimants have marked hospital bills, pharmacy bills and connected records.

4.The deceased was an Income Tax assessee and he was earning Rs.60,000/- per month since he was running a printing press. After his death, the press was closed. All the 3 claimants are depending upon the income of the deceased. Considering the age, income, occupation, medical expenses and dependency, the award was passed. Now, the claimants are seeking an additional compensation of a sum of Rs.5,00,000/- with interest. Eventhough, the Insurance Company had not contested the case by filing a counter statement, there is no lacuna or lapse in the impugned award and it is suitable for execution.

5.The very competent counsel Mr.S.R.Sumathy appearing for the second respondent / Insurance Company vehemently argued that due to unavoidable circumstances, the Insurance Company had been shifted from one place to another place. Therefore, the claim petition proceedings could not be followed. However, knowing the passing of exparte award, the contested respondent rushed to the Tribunal and filed an application for setting aside the exparte award, before numbering the said application, the claimant has filed the above appeal before this Court and the same has been admitted. Subsequently, the trial Court records were called for to decide the above appeal. As a result, the set aside application is not numbered and is still pending on the file of trial Court. Hence, the very competent counsel entreats the Court to remand the above appeal to the trial Court for fresh disposal.

6.Per contra, the learned counsel Mr.UM.Ravichandran appearing for the appellants submits that the accident had happened on 01.06.2010. Immediately claim petition has been filed and now after 5 years, the Insurance Company has come forward to oppose the well considered award. The claimants had spent a sum of Rs.20,63,000/- towards medical expenses. Therefore, under the circumstances, if the above appeal is remanded, the claimants will be put into irreparable hardship and suffering. All the claimants are still in grievous mood, since they had lost their breadwinner and supporter. It is an admitted fact that the F.I.R. has been filed against the driver of offending vehicle and the same has been insured with the Insurance Company. Therefore, retrial is not required. Further, the learned counsel cannot seek any relief in the above appeal filed by the claimants.

7.On considering the facts and circumstances of the case and arguments advanced by the learned counsels on either side and on perusing the typed set of papers, this Court is of the view that the claimants have spent a sum of Rs.20,63,000/- towards medical expenses. To that effect, they have marked substantial medical documents namely hospital and pharmacy bills as exhibits P22 and P23. Therefore, the claimants are entitled to receive the same with interest at the rate of 7.5% per annum from the date of claim i.e. 30.05.2011 till payment of the said amount. Besides, the claimants are also entitled to receive 50% of the balance compensation i.e. Rs.19,50,625/- out of Rs.39,01,250/-. This amount also will carry interest from the above said period. In total, the claimants are entitled to receive Rs.40,13,625/- as interim relief, since the claimants are suffering for around 5 years.

8.Therefore, this Court directs the second respondent/Insurance herein to pay the interim compensation of a sum of Rs.40,13,625/- with interest at the rate of 7.5% per annum from 30.05.2011 till date of payment of compensation. This Court directs the Insurance Company to pay the said amount within a period of four weeks from the date of receipt of this order by way of pay order in the name of first claimant in the presence of learned counsel Mr.UM.Ravichandran. After paying the said amount, the Insurance Company has to file a memo before the trial Court to that effect. After filing of memo, the III Court of Small Causes Court, Chennai is directed to reject the unnumbered set aside application filed by the Insurance Company and restore the case in M.C.O.P.No.5146 of 2011 on the file of III Court of Small Causes Court and decide the said case on merits within a period of three months, on merits, without being influenced by the discussions of this Court.

9.In the result, the above civil miscellaneous appeal is disposed of with the above terms and conditions. No costs.

vs

s/d-
Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

To

1. The Motor Accident Claims Tribunal,
(III Court of Small Causes Court),
Chennai.

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

+ 1 cc to Mr.U.M.Ravichandran, Advocate SR 55709

+ 1 cc to Mr.S.R.Sumathi, Advocate SR 56469

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