

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:- 04.01.2016

CORAM:

THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A.No.2312 of 2015
and
M.P.Nos.1 and 2 of 2015

The National Insurance
Co. Ltd.,
K.K.Road,
Villupuram.

... Appellant/2nd Respondent

Versus

1.Sumathi
2.Minor Nirmal
(Minor rep. by his guardian/mother 1st petitioner)
3.Raja
4.Anjalai

..Respondents/Petitioner/
Respondents 1&3

Prayer: Civil Miscellaneous Appeal filed under section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 15.06.2015 made in M.C.O.P.No.44 of 2012 on the file of the Principal District Judge/Motor Vehicle Accidents Claims Tribunal, Villupuram.

For Appellant :: Mr.S.Vadivel

For Respondents :: Mr.C.Munusamy for R1 and R2

J U D G M E N T

This civil miscellaneous appeal has been directed against the impugned award passed by the learned Motor Vehicles Accident Claims Tribunal cum Principal District Judge, Villupuram in M.C.O.P.No.44 of 2012 dated 15.06.2015 awarding a sum of Rs.6,14,000/- on the ground of negligence contributed by the deceased victim.

2.Learned counsel appearing for the appellant/National Insurance Company assigning the impugned award would submit that when the claimants had filed FIR as Ex.P1 to prove the accident in all fairness, the learned Tribunal ought to have taken the contents of the FIR Ex.P1, while giving the point of negligence. But the learned Tribunal failed to consider the entire version shown in the FIR indicating the negligence contributed by the deceased victim who drove the vehicle, hit on the backside of the parked vehicle and invited the accident. He would further submit that the learned Tribunal failed to consider the statements given by Mr.Govindasamy and one Dhandapani, father and native villager of the deceased under section 161(3) Cr.P.C. categorically stating that the deceased himself was riding the motor cycle bearing Registration No.TN-22-AA-6681 in a rash and negligent manner and dashed against the parked lorry bearing Registration No.TN-32-U-2525.

3.It is an admitted case of the claimant that the accident had occurred on 11.12.2008 at about 0.30a.m. when the deceased Sekar was driving his Hero Honda Splendor motor cycle bearing Registration No.TN 22 AA 6681 from Villupuram to Tirukoilur road along with Shanmughi, a pillion rider, has completely ignored the first respondent's lorry bearing Registration No.TN 32 U 2525 which was parked in the National Highway road near V.Palayam village bus stop and only due to the reason the motor cycle dashed against the lorry that was parked on the left side of the road, the accident had occurred. As a result, the deceased Sekar sustained grievous injuries along with Shanmugi, who was riding as a pillion rider.

4.Learned counsel appearing for the appellant would submit that when the lorry was parked on the left side of the road with all signals indicating the signal light, it goes without saying that the deceased Sekar who drove the two wheeler and dashed against the parked vehicle, has alone invited the accident. But this material aspect has been completely overlooked by the learned Tribunal. He would further submit that at the time of the accident, the deceased was carrying a transgender as a pillion rider. When the time of accident being 0.30 a.m. on 11.12.2008, the learned Tribunal ought to have taken into account that the injured who was also a transgender was travelling along with the deceased Sekar might have contributed his negligence. Again placing on the statement recorded from Govindasamy under Section 161(3) Cr.P.C. and another statement recorded from Mr.Dhandapani under section 161(3) Cr.P.C., the learned counsel for the appellant would submit that when it is a consistent case of the Insurance Company that the deceased Sekar at the time of the accident was carrying a transgender in his

two wheeler at midnight, the learned Tribunal could have atleast adverted to the statements recorded which has not been done in this case, hence interference is called for, he pleaded.

5. At this point of time, the learned counsel appearing for the claimant opposing the above contention stated that neither of the statements recorded from Govindasamy and Dhandapani under Section 161(3) Cr.P.C. was produced before the learned Tribunal and he would further submit that when it has been contended by the learned counsel for the appellant that the FIR has been lodged under section 154 Cr.P.C. by the driver of the vehicle, it is not known as to why even the driver of the lorry which is said to have been parked on the left side of the road was not examined. Therefore, when all these documents recorded under section 164(3) Cr.P.C. have not been marked as evidence, it is not open to the learned counsel for the appellant to rely on these documents before this Appellate Court to create a new case to escape from the liability.

6. In reply, the learned counsel for the Insurance company would submit that these documents were produced before the learned Tribunal along with FIR. Therefore nothing is wrong in taking support from the documents as they are part of the FIR. But this court is unable to find any support in the contentions made by the learned counsel for the Insurance company to throw the negligence on the head of the injured. The reason is that when the FIR was registered on 11.12.2008 against the victim who drove the two wheeler, the same cannot be taken as a seal to wriggle out from the liability. Because the statements recorded under section 164(3) Cr.P.C. and the author of the FIR viz., the driver of the lorry that was parked on the left side of the road, in my considered opinion, should have been produced before the learned Tribunal to support the case of the Insurance company that the victim viz., Sekar was driving his two wheeler carrying transgender rashly and negligently, as a result, invited the accident. That exercise had not been done before the Tribunal. Therefore, this Court finds that no minimum care has been shown before the learned Tribunal to prove the negligence on the part of the deceased who drove the vehicle and hit on the parked lorry bearing Registration No. TN 32 U 2525, hence, this court is not able to find any infirmity in the impugned award. Therefore, the appeal fails and the same is dismissed. No costs. The connected miscellaneous petitions are also dismissed.

7. In view of the dismissal of the civil miscellaneous

appeal, it is open to the claimants to move appropriate application before the Tribunal for withdrawal of the award amount.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

vri

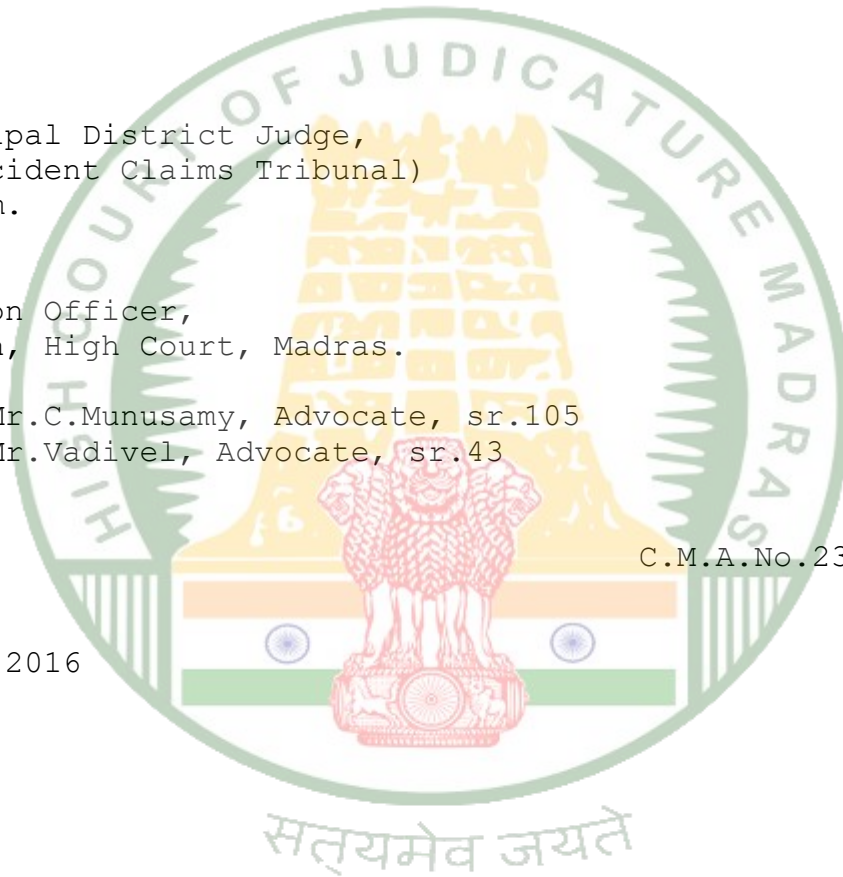
To
The Principal District Judge,
(Motor Accident Claims Tribunal)
Villupuram.

Copy to:
The Section Officer,
VR Section, High Court, Madras.

+1 cc to Mr.C.Munusamy, Advocate, sr.105
+1 cc to Mr.Vadivel, Advocate, sr.43

C.M.A.No.2312 of 20150

tej co
kra 10.02.2016



WEB COPY