

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.02.2017

CORAM : THE HONOURABLE Mr. JUSTICE N.SESHASAYEE

CMA.No.161 of 2004

1.Manimegalai
2.Suguna
3.Sumanraj (Minor)
Rep. by mother & next friend Manimegalai ... Appellants

Vs.

1.Autolec Industries Limited,
No.J-27, I Main Road,
Anna Nagar,
Chennai - 600 102.
2.National Insurance Company Limited,
No.751, Anna Salai,,
Chennai - 600 002. ... Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the judgment and decree dated 12.03.2001 made in MCOP.No.631 of 1993 on the file of the Motor Accidents Claims Tribunal. Sub Court, Poonamallee.

For Appellants :Mr.C.Richard Suresh Kumar
for Mr.J.Mahalingam
For Respondents :Mr.S.Arun Kumar [R2]

JUDGMENT

In a road accident that took place on 21.8.1993 at about 8.00 p.m. at G.N.T. Road, a two wheeler was knocked down by a van owing to which its rider and the pillion rider suffered injuries. The rider died two days later succumbing to the injuries. The rider was the son-in-law and the pillion rider was his mother-in-law. Seeking compensation his widow and minor children moved the Tribunal with a claim of Rs.5,00,000/- whereas the Tribunal has assessed the compensation at Rs.1,53,000/-. However it has held that the claimants could not establish negligence on the part of the driver of the offending van and consequently granted an award for Rs.25,000/- under no fault liability.

2. The only argument raised by the learned counsel for the appellants was that right from the pleadings down to the evidence nowhere it was ever hinted that the driver of the offending vehicle was not at fault and the evidence pointedly show that it was a case of a van hitting from behind and this was not controverted during cross examination of both the eye witnesses, P.W.2 and P.W.3 of whom P.W.3 is the pillion rider who herself had suffered injuries in the accident.

3. Per contra, the learned counsel for the Second respondent submitted that the claimants though pleaded in Column No.23 of the petition that the offending van came in the same direction and hit the scooter implying thereby that it might be a case of hit from behind, in the counter filed by the Insurance Company it was stated that the van driver was taking a "U" turn and the scooterist due to his negligence had ramped on it. In other words the entire negligence was on the part of the rider of the scooter and it is hence the Tribunal has appropriately granted an award under the head "no fault liability".

4. I find second respondent's valiant attempt is in vain. It is pleaded by the claimants that the offending vehicle was coming in the same direction as the scooter was. True, there is no hint in it as to how exactly the accident had taken place. P.W.2 who was said to be travelling behind the scooter involved in this accident too has not provided any elaborate details as to how the accident had taken place. This leaves only the evidence of P.W.3, the mother-in-law of the victim for consideration. She, a lady aged about 50 years at that relevant time, would say all that she felt was a hit on the rear side of the scooter and that she did not know what has happened in the front. The manner of the accident as contended by the respondent was not even confronted to her and to that extent it must be said that this witness has adequately proved the claimants' version of the accident. On the side of the respondents, no evidence of any kind was adduced. The nature and quality of evidence available before this Court necessarily leads to only probable inference that the driver of the offending van alone was responsible for the accident. Necessarily neither the owner nor the Insurance Company of the offending van can escape liability to pay compensation to the victim of the accident.

5. In the result, the appeal is allowed with no costs and the respondents are directed to pay the sum of Rs.1,53,000/- with interest @ 9%, less any amount already deposited within four weeks from the date of receipt of a copy of this order, whereupon the claimants would be entitled to withdraw the same forthwith.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The Motor Accidents Claims Tribunal,
Sub Court, Poonamallee.

+1cc to Mr.S. Arunkumar, Advocate, S.R.No.8619

lrs (CO)
md(17/03/2017)

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