

IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 14.02.2017

CORAM:

THE HONOURABLE MR.JUSTICE N.AUTHINATHAN

C.M.A. No.2549 of 2012

1.Vijayarangan
2.Thamizharasi

... Appellants/Petitioners 1&2

-vs-

1.N.Naseer Beevi
2.The Manager, Cholamandalam MS
General Insurance Company Ltd.,
"Dare House", 2nd Floor,
2, N.S.C.Bose Road,
Chennai - 600 001.

3.Maheswari
4.Mahesraj
5.Nareshraj
6.Bhuvaneswari

... Respondents/Respondents
Petitioners 3to6

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 23.01.2012 made in M.C.O.P.No.2702 of 2008 on the file of the Motor Accident Claims Tribunal (Additional District Judge), Fast Track Court No.II, Cuddalore.

For Appellants : Mr.S.Kalyanaraman

For Respondents : No Appearance

J U D G M E N T

The claimants are the appellants in M.C.O.P.No.2702 of 2008 on the file of the Motor Accident Claims Tribunal (Additional District Judge), Fast Track Court No.II, Cuddalore. The claimants have filed the above Motor Claims Original Petition claiming a compensation of Rs.25,00,000/- for the death of Sivanraj, in a motor accident. Sivanraj is the son of the appellants.

2. On 28.07.2006, Sivanraj and his friends travelled in a Toyota Qualis Car bearing Registration No.TN-01-S-5526 and the car was driven by the driver in a rash and negligent manner and collided with the vehicle coming from the opposite direction, as a result of the accident, Sivanraj sustained grievous injuries and succumbed to the injuries on 29.07.2006.

3. At the time of accident, the deceased was studying in Kumaran I.T.I. and he was 20 years old. They have claimed total compensation of Rs.25,00,000/-.The Tribunal fixed the compensation of Rs.5,85,110/- payable to the parents. The Tribunal further found that, the accident occurred, as a result of composite negligence of the driver of the Qualis Car and the driver of oncoming bus. It apportioned the negligence at 50-50. One of the two vehicles was unidentified. The insurer and the owner of the unidentified bus were not added as parties to the claim petition. Hence, the Tribunal granted only 50% of the compensation i.e. Rs.2,92,555/- to the claimants. The balance have to be recovered from the untraceable vehicle owner.

4. The learned counsel for the appellants would submit that as far as the claimants are concerned, they are at liberty to proceed against either or both the tort-feasors, as their liability would be joint and several. In this connection, he relied on the judgment of the Hon'ble Supreme Court in KAMLESH & OTHERS vs. ATTAR SINGH & OTHERS [2016-3-L.W.75].

5. In KHENYEI vs. NEW INDIA ASSURANCE CO. LTD. AND OTHERS [2015-5-L.S.826], the Hon'ble Supreme Court has held that "the claimant in a motor accident case is entitled to sue both or any one of the joint tort feasors and to recover the entire compensation". The said legal position was reiterated in a subsequent decision of the Hon'ble Supreme Court in KAMLESH & OTHERS vs. ATTAR SINGH & OTHERS [2016-3-L.W.75]. As the Hon'ble Supreme Court has clearly laid down that the apportionment of compensation between two tort-feasors vis-a-vis the claimant is not permissible, the claimant can recover at his option whole damages from any of them. In view of the law laid down by the Hon'ble Supreme Court and in the absence of impleadment of joint tort-feasors, the apportionment of the award amount by the Tribunal cannot be sustained and it is liable to be set aside. The claimants are entitled to receive the entire compensation of Rs.5,85,110/- from the respondents 1 and 2. No other point was urged.

6. In the result, the Civil Miscellaneous Appeal is allowed to the extend as indicated above. The first respondent / owner of the offending vehicle and the second respondent / Insurance Company is directed to deposit the entire award amount of Rs.5,85,110/- [Rupees Five Lakhs Eighty Five Thousand One

Hundred Ten Only] with interest at the rate of 7.5% per annum and costs, less the statutory deposit, to the credit of M.C.O.P.No.2702 of 2008 on the file of the Motor Accident Claims Tribunal (Additional District Judge), Fast Track Court No.II, Cuddalore, within a period of six weeks from the date of receipt of a copy of this order. On receipt of the same, the appellants/claimants are permitted to withdraw the compensation award amount with proportionate interest less the amount already withdrawn, if any, by making necessary application before the Tribunal. There shall be no orders as to costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

sri
To

1. The Motor Accident Claims Tribunal
(Additional District Judge),
Fast Track Court No.II, Cuddalore.

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

+ 1 cc to Mr.S. Kalyanaraman, Advocate SR.9518

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MSM(CO)
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