

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.02.2017

CORAM: THE HONOURABLE Mr.JUSTICE N.SESHASAYEE

C.M.A.No.820 of 2009
and MP.No.1 of 2009

The National Insurance Co. Ltd.,
Kangeyamm.

... Appellant/
Respondent II

Vs.

1.Govindammal (died)
2.Rangasamy
3.Ayyappan
4.Marimuthu

...RR1 to 4 Respondents/
Petitioners 1 to 4

5.A.Visvanathan

... Respondents V/Respondent-I

Prayer : Civil Miscellaneous Appeals filed under Section 173 of Motor Vehicles Act 1988 against the judgment and decree passed in MCOP.No.638 of 2004 on 27.08.2008 on the file of the learned Motor Accident Claims Tribunal (Additional District Court, Fast Track Court No.IV) Tiruppur at Coimbatore District.

For Appellant :Mr.J.Chandran
For Respondents :Mr.Ma.Pa.Thangavel [R2 to R4]
R1 - Died

JUDGMENT

The insurance company of a lorry bearing registration No.TN N 4941 which was arrayed as the second respondent before the Tribunal had preferred this appeal challenging essentially its liability.

2. The brief facts of the case are that on 18.8.2004 one Kumar while riding his motorcycle was fatally knocked down by a lorry belonging to the fifth respondent herein (first respondent before the Tribunal). Seeking compensation his widowed mother moved the Tribunal with a claim of Rs.5,00,000/-, as against which the Tribunal has passed an award for Rs.4,57,800/- with interest at 7.5% per annum and fastened the liability on the insurer of the lorry. Challenging both the factum of negligence as well as quantum of compensation, the appellant/insurance company has come forward with this appeal.

3.The learned counsel for the appellant argued that the evidence in this case indicate that the deceased Kumar was solely

negligent for the accident and that the Tribunal has not appreciated the evidence adequately. Secondly, he argued that the victim of the accident was a bachelor at the time of accident and that the claim was preferred only by his widowed mother, and his mother too died pending disposal of her claim petition in 2007, whereupon her other children (brothers of the victim) were impleaded as claimants 2 to 4. In law, the legal representatives of a deceased claimant (i.e., the impleaded respondents 2 to 4) are not entitled to claim compensation, since these claimants are not considered as the legal representatives of the victim as per Clause-I under the Hindu Succession Act.

4. Per contra, the learned counsel for the claimants would contend that the contentions of the appellant as to the rights of the legal representatives of the original claimant to claim compensation is now settled vide authorities in Goutham Bafna & 5 others Vs. J.Pramod Kumar Bansal & others [2009(2) TN MAC 526]; Glory Bai & another Vs.S.K.A.Noorjahan Beevi & Others [CDJ 2011 MHC 1972] and accordingly claimants 2 to 4 are entitled to succeed to the estate of their mother in which her claim is vested.

5. As to the argument on the negligence, the learned counsel for the appellant submitted that while the complainant was examined as P.W.3, who had described how the accident had taken place, the respondents have not thought it fit to adduce any oral or documentary evidence to negate any inference to that could be drawn from the evidence of P.W.3.

6. After carefully weighing rival submissions I find considerable merit in the submissions of the counsel for the respondents on both the grounds, on which the argument of the appellant counsel was pivoted. Accordingly, I find no ground to interfere with the award of the Tribunal and hence the appeal is dismissed without costs. The appellant and fifth respondent herein are directed to deposit the amount payable under the impugned award with interest at 7.5% 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. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

ds

To:

1. The Motor Accident Claims Tribunal
FTC-IV
Tiruppur at Coimbatore.

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

+1cc to Mr.P.Thangavel, Advocate Sr. 11958

C.M.A.No.820 of 2009

PVS (CO)
VR(18/09/2017)



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