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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.11.2018

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THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

CMA.No.1789 of 2006

and

CMP.No.8364 of 2006

1.State of Tamil Nadu rep.by
The Chief Engineer,
Agricultural Engineering Department,
Chennai - 35.

2.State of Tamil Nadu rep.by
The District Collector,
Nagapattinam District,
Nagapattinam.

...Appellants/Respondents

-Vs-

1.Prema
2.Agila
3.Vimala
4.Muthulakshmi (Died)

5.Major Balamurugan
(R5 declared as major vide
order of the Court dated
24.02.14 made in CMA.1789/06)

...Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act 1988, against the judgment and decree dated 31.08.2004 made in MCOP.No.127/2004 on the file of The District Judge, Motor Accident Claims Tribunal, Nagapattinam.

For Appellant : Mr.Dev.Narendran

For Respondents: Mr.A.E.Ravi Chandran

J U D G M E N T

The civil miscellaneous appeal has been filed against the judgment and decree passed in MCOP.No.127/2004 dated 31.08.2004 on the file of Motor Accident Claims Tribunal, Nagapattinam.

2.The brief facts leading to the claim application are as follows:-

On 19.06.2002, at about 5.00 p.m., when the deceased



Selvaraj was proceeding in his TVS.50 (XL), in the main road from East to West at Nagoor, the vehicle bearing Registration No.TN.51/G.0209, driven by its driver in a rash and negligent manner, dashed against the deceased Selvaraj by hitting on his vehicle and he sustained severe injuries all over the body and at the time of accident one Ramadoss, who was travelling in the car coming behind the TVS.50, only took him to the hospital for treatment and in spite of the treatment given to Selvaraj, he died on the same day. The claimants are being the legal heirs of the deceased, have preferred the claim application, claiming a sum of Rs.10 lakhs as compensation.

3.The respondent in the counter statement has stated that the accident did not occur as stated in the claim application. The tractor was parked near the campus, after completing the work on the said day. As stated by the claimant, the accident did not occur and there is no involvement of this vehicle with the accident. Further, it is stated that the deceased at the time of accident was under influence of alcohol and the injury sustained by him are not due to the said accident. Hence, involvement of the vehicle in the accident is totally denied.

4.The Tribunal after analyzing the evidence and documents placed before the same, has given a finding that it is the rash and negligent driving on the part of the driver of the tractor, which resulted in the accident and death also caused to the deceased namely Selvaraj and awarded a sum of Rs.2,84,880/- as compensation.

5.Aggrieved against the liability, the respondent has preferred this appeal.

6. It is stated in the appeal that there is no mention of the appellant's vehicle number in the FIR but the Tribunal has not considered the same. The accident occurred only due to the rash and negligent driving on the part of the deceased, who was under the influence of alcohol and he himself fallen down and sustained injury on his own, hence there is no involvement by this vehicle. It is also stated that the tractor belonging to the appellant was found about 30 feet away from the TVS 50 and that itself proved the non-involvement of the appellant's vehicle in the said accident and the other grievance raised by the appellant is that the sum arrived by the Tribunal by compensation is Rs.2,84,880/- is not justified and it is very much on the higher side. The compensation calculated without deduction 1/3rd of monthly income towards the personal expenses is also very much contended by the appellant. In view of the above, the compensation awarded by the Tribunal is not proper and the same has to be set aside.



7. On a perusal of the records and judgment, it is seen that before the Tribunal, two witnesses were examined to prove the accident. It is the evidence of P.W.1 who has stated that when he was proceeding in his car on 19.06.2002, at 4.00 pm in the panakudi main road, his brother Selvaraj was proceeding in the TVS 50 and at that time, the tractor which was coming in the opposite direction dashed against the two wheeler (TVS 50) which was driven by the deceased Selvaraj and he sustained severe injuries. Immediately P.W.1 has taken the injured Selvaraj in his car to Nagapattinam Government Hospital. After given treatment in the said hospital, he was taken to Tanjavoor Government Hospital for further treatment. The other witnesses P.W.2 has also deposed that when the deceased Selvaraj was proceeding in TVS 50 in front of a car which came in the opposite direction hit against the two wheeler driven by the deceased.

8. Further, it is seen from the evidence of R.W.1 namely Perumal, the claimant of the said tractor that he has also admitted the said accident and charge sheet also filed against him. It is also brought to the notice of this Court by the respondent that subsequent to the accident, witnesses were examined and the vehicle which caused the accident was properly fixed by mentioning the registration number. Hence, on the side of the respondent, it is argued by the respondents, it is the clear evidence that the appellant's vehicles has only caused the accident due to the rash and negligent driving by its driver. The other arguments of the appellant that the deceased was under the influence of alcohol at the time of the accident was very much opposed by the respondents/claimants by producing Ex.P2 postmortem report, in which there is no mentioning about the consumption of alcohol by the deceased. Hence, by considering the above facts, the Tribunal has come to the conclusion that the accident had occurred only due to the rash and negligent driving on the part of the appellant's driver and he is responsible for the accident and involvement of the vehicle was also proved by the witness as well as the own admission of RW1 itself.

9. On a overall consideration of the arguments advanced by the appellant and respondents and also the documents and evidence, it is very much proved the fact that the accident had occurred only due to rash and negligent driving on the part of the driver and appellant's vehicle. Hence, this Court is of the opinion that the finding of the Tribunal is proper and appropriate one, which does not require any interference. Since it is represented by the appellant that the award amount was already deposited before the Tribunal, the respondents/claimants are permitted to withdraw the same.



10. In the result, the Civil Miscellaneous Appeal is dismissed by confirming the order of the Tribunal. No costs. Consequently, connected miscellaneous petition is closed.

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Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

1. The District Judge,
Motor Accident Claims Tribunal,
Nagapattinam.

2. The Section Officer,
V.R.Section,
High Court, Madras.

+1cc to the Spl.Govt.Pleader, Vide SR.No.75186

CMA.No.1789 of 2006

Kak(01/08/2019)