

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.12.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2616 of 2015

R.Krithigavasan

.. Appellant / Respondent

Vs.

1.Indira
2.Chitra
3.Viji
4.Anitha
5.Babu

.. Respondents / Claimants

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988 against the award and decree dated 20.08.2014 made in M.C.O.P.No.1753 of 2010, on the file of Principal District Court, (Motor Accidents Claims Tribunal), Cuddalore.

For Appellant : Mr.R.Muralidharan

For Respondents : M/s.A.Salomi
for M/s.U.Anunitha

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the award and decree dated 20.08.2014 made in M.C.O.P.No.1753 of 2010, on the file of Principal District Court, (Motor Accidents Claims Tribunal), Cuddalore.

2.The appellant is the respondent in M.C.O.P.No.1753 of 2010, on the file of Principal District Court, (Motor Accidents Claims Tribunal), Cuddalore. The respondents filed the said claim petition, claiming a sum of Rs.15,00,000/- for the death of one Pazhanivel, husband of the 1st respondent and father of the respondents 2 to 5, who died in the accident that took place on 12.03.2006.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to the rash and negligent driving by the appellant, who is the rider-cum-owner of the motor cycle and awarded a sum of Rs.5,65,000/-

as compensation to the respondents and directed the appellant to pay the same.

4. Aggrieved by the said award granted by the Tribunal, the appellant has come out with the appeal.

5. The learned counsel appearing for the appellant contended that the Tribunal erred in fixing the negligence on the part of the appellant for the accident, without considering the oral and documentary evidence of the appellant. The Tribunal failed to see that P.W.2, son of the deceased was not an eye-witness. There is discrepancy in the evidence given by P.W.2 before the Tribunal and before the Criminal Court. The Tribunal failed to see that the appellant's vehicle was not involved in the accident and some other vehicle was involved in the accident. In any event, the amounts awarded by the Tribunal is excessive and prayed for setting aside the award of the Tribunal.

6. Per contra, the learned counsel appearing for the respondents contended that the respondents have examined P.W.2, 5th respondent herein, who is the son of the deceased and eye-witness to the accident and proved that the appellant was responsible for the accident. The appellant has not examined any independent witness to prove that a four wheeler dashed against the vehicle of the appellant and then dashed against the deceased and caused the accident. The judgment of the Criminal Court is not binding on the Tribunal and amount awarded by the Tribunal is not excessive and prayed for dismissal of the appeal.

7. Heard the learned counsel for the appellant as well as the respondents and perused the materials available on record.

8. The respondents have contended that the accident occurred only due to the rash and negligent driving by the appellant who dashed against the deceased from behind and due to the injuries sustained in the accident, the deceased died. On the other hand, the appellant contended that a four wheeler dashed against the two wheeler driven by him and thereafter, dashed against the deceased and caused the accident. Taking advantage of his unconsciousness, a false complaint was lodged against him before the police. The learned counsel for the appellant referred to the judgment of the Criminal Court, wherein the appellant was acquitted. This contention is not acceptable, as it is well settled that the proceedings in Criminal Court is not binding on the Tribunal and the Tribunal has to independently consider the evidences let in by the parties and come to the conclusion with regard to negligence and cause of accident.

9. In the present case, the Tribunal considering the contentions in the claim petition and evidence of P.W.2, eye-

witness, accepted the version of respondents. Even though the appellant is claiming that the complaint lodged against him is false, he has not filed any objection before the police or any higher authority. The appellant has not examined any independent witnesses to substantiate his case that only unknown four wheeler was responsible for the accident and the said four wheeler dashed against the two wheeler driven by the appellant and dashed against the deceased. The Tribunal for the above reason, held that the accident occurred only due to the rash and negligent driving by the appellant and directed the appellant to pay the compensation to the respondents. Therefore, there is no reason warranting interference by this Court to set aside the said finding.

10.As far as the quantum of compensation is concerned, the Tribunal has fixed the notional income of the deceased at Rs.6,000/- per month in the absence of any documents produced by the respondents and awarded compensation for loss of income and also on other heads. The compensation awarded by the Tribunal is just compensation and is not excessive. There is no perversity warranting interference by this Court in the order of the Tribunal.

11.In the result, this Civil Miscellaneous Appeal is dismissed and the award of Rs.5,65,000/- with interest and costs awarded by the Tribunal to the respondents as compensation is confirmed. The appellant is directed to deposit the award amount with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P.No.1753 of 2010. On such deposit, the respondents/claimants are permitted to withdraw the award amount with interest and costs, as per the ratio of apportionment fixed by the Tribunal, after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal. No costs.

Sd/-

Assistant Registrar (CO)

//True Copy//

gsa
To

Sub Assistant Registrar

The Principal District Judge,
(Motor Accidents Claims Tribunal), Cuddalore.

+1cc to M/s.R.Muralidharan, Advocate, S.R.No.82703
+1cc to M/s.V.Aninitha, Advocate, S.R.No.82721

VSN-II (CO)
SSM(02/04/2019) .

C.M.A.No.2616 of 2015