

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.12.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2837 of 2018

Kalimuthu (died)

1.K.Rani

2.K.Sendhilkumar

3.K.Arunkumar

4.K.Menaka

5.K.Vennila

... Appellants / Petitioners

Vs.

1.Kuppusamy

2.M.Vinayagam

3.Suresh

... Respondents / Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 31.01.2018 made in M.C.O.P.No.373 of 2008, on the file of Motor Accidents Claims Tribunal, Additional District Court, Krishnagiri.

For Appellants: Mr.Pitty Parthasarathy

J U D G M E N T

This Civil Miscellaneous Appeal has been filed seeking enhancement of compensation granted by the award dated 31.01.2018 made in M.C.O.P.No.373 of 2008, on the file of Motor Accidents Claims Tribunal, Additional District Court, Krishnagiri.

2.The appellants are the claimants in M.C.O.P.No.373 of 2008 on the file of Motor Accidents Claims Tribunal, Additional District Court, Krishnagiri. The appellants filed the above claim petition claiming a sum of Rs.10,00,000/- as compensation

for the death of one M.Kalimuthu, who died in the accident that took place on 16.04.2007.

3.The Tribunal considering the pleadings, oral and documentary evidence held that the accident occurred only due to rash and negligent driving by the second respondent/driver of the vehicle belonging to the first respondent and directed the second respondent to pay a sum of Rs.7,23,000/- as compensation to the appellants/claimants.

4.Not being satisfied with the award amount granted by the Tribunal, the appellants have come out with the present appeal challenging the portion of the award exonerating the respondents 1 and 3 and also seeking enhancement of compensation.

5.The learned counsel appearing for the appellants contended that the deceased was working as a sweeper and the Tribunal fixed meagre sum of Rs.3,000/- per month as notional income of the deceased. The Tribunal atleast would have fixed a sum of Rs.6,000/- per month as notional income of the deceased. The deceased was aged 50 years at the time of accident. The amounts awarded by the Tribunal under various heads are very meager and the Tribunal erred in directing the second respondent alone to pay the compensation. The first respondent in the counter statement did not deny that he was the owner of the vehicle. The respondents 1 and 3, who are father and son respectively, to avoid paying the compensation, denied the ownership of the vehicle and prayed for setting aside the award of the Tribunal.

6.Heard the learned counsel appearing for the appellants and perused all the materials available on record.

7.From the materials on record, it is seen that at the time of accident, the TVS 50 was driven by the second respondent, which was not registered and without any number plate. The appellants have not produced any registration certificate to show that the respondents 1 and 3 were owners of the vehicle at the time of accident. The appellants have also not proved that the second respondent, who was riding the TVS 50 was an employee of the respondents 1 and 3 and he was using the offending vehicle for the business purpose. On the other hand, P.W.4, Sub Inspector of Police, who investigated the case, has deposed that the respondents 1 and 3 are not owners of TVS 50 and one Ram was owner of the vehicle. P.W.4 admitted that she did not take any action against the said Ram. In view of the fact that no material was placed before the Tribunal to show that the respondents 1 and 3 are owners of the offending vehicle and that the second respondent was an employee of respondents 1 and 3, based on the evidence of P.W.4, the Tribunal has held that only the second respondent is liable to pay compensation to the

appellants. From the counter statement filed by the first respondent, it is seen that the first respondent has specifically denied that he is not the owner of the two wheeler and he does not know who is second respondent and who drove the offending vehicle. In view of the specific denial, the contention of the learned counsel appearing for the appellants that the first respondent has not denied the ownership of the vehicle is contrary to the facts.

8.As far as quantum of compensation is concerned, the Tribunal has awarded a sum of Rs.2,55,000/- under conventional heads, which is excessive, while the appellants are entitled only a sum of Rs.70,000/- towards conventional head. In view of the same, the amount awarded by the Tribunal towards loss of dependency need not be modified.

9.Accordingly, the award passed by the Tribunal is hereby confirmed and the Civil Miscellaneous Appeal is dismissed. The second respondent is directed to deposit the award amount along 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. On such deposit, the appellants/claimants are permitted to withdraw their respective share amounts as apportioned by the Tribunal along with proportionate interest and costs, less the amount if any, already withdrawn. No costs.

Sd/-
Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

kj/krk

To

The Motor Accidents Claims Tribunal,
Additional District Judge,
Krishnagiri.

+1 cc to Mr.Pitty Parthasarathy, Advocate, S.R.No.84835

NRL(CO)
SSM(18/02/2019)

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