

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.11.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2552 of 2018

Saritha

.. Appellant /Petitioner

Vs.

1.Kotteeswaran

2.National Insurance Co Ltd.,
(Motor 3rd Party Claim Office)
No.752, Anna Salai,
Chennai - 600 002.

.. Respondents /Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award dated 06.12.2017 made in M.C.O.P.No.407 of 2014, on the file of the Motor Accidents Claims Tribunal, II Additional District Court, Poonamallee.

For Appellant : Mr.K.Varadha Kamaraj

For R2 : Mr.D.Baskaran

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the judgment and decree dated 06.12.2017 made in M.C.O.P.No.407 of 2014, on the file of the Motor Accidents Claims Tribunal, II Additional District Court, Poonamallee.

2.By consent of both the parties, this appeal is taken up for final disposal at the admission stage itself.

3.The appellant is claimant in M.C.O.P.No.407 of 2014, on the file of the Motor Accidents Claims Tribunal, II Additional District Court, Poonamallee. She filed the above claim petition claiming a sum of Rs.15,00,000/- for the death of her younger brother viz., Saravanan, who died in the accident that took place on 15.09.2011.

4.The Tribunal considering the pleadings, oral and

documentary evidence, held that the appellant is entitled for compensation under Section 163A of the Motor Vehicles Act, as the accident is not due to the negligence of the deceased. The Tribunal considering the fact that the appellant is the sister of the deceased and she is not dependent of the deceased, held that no compensation has been granted towards loss of dependency and awarded a sum of Rs.70,000/- under conventional heads and directed the second respondent/Insurance Company to pay the said compensation to the appellant.

5. Not being satisfied with the amount awarded by the Tribunal, the appellant has come out with the present appeal for enhancement of compensation.

6. The learned counsel appearing for the appellant contended that the Tribunal having held that accident did not occur due to negligence of the deceased, ought to have fixed income of the deceased and awarded compensation towards loss of income to the appellant. The Tribunal erred in not awarding amount under the head of loss of income on the ground that the appellant is not a dependent of the deceased. Therefore, he prayed for enhancement of compensation.

7. Per contra, the learned counsel appearing for the second respondent/Insurance Company contended that the Tribunal erred in holding that the second respondent is liable to pay compensation. When it is an admitted fact that an unidentified lorry dashed against the motor cycle, in which, the deceased was traveling and caused accident, only owner and insurer of the lorry is liable to pay compensation and second respondent/Insurance Company is not liable to pay any compensation and prayed for dismissal of the appeal.

8. Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the second respondent and perused the materials on record.

9. The Tribunal considering the pleadings, oral and documentary evidence, held that as per Section 163A of the Motor Vehicles Act, 1988, the second respondent/Insurance Company is liable to pay compensation. In the present case, it is an admitted case that accident did not occur due to negligence of the deceased. It is also admitted that two vehicles are involved in the accident. In view of the above facts, there is no error in the findings of the Tribunal that the second respondent is liable to pay compensation to the appellant.

10. From the materials on record, it is seen that the appellant, who is sister of the deceased, failed to let in any evidence to show that she is depending on the income of her brother. It is well settled that even a married daughter is

entitled to get compensation. In the present case, the appellant, who is married sister of the deceased, failed to prove that she was depending on her brother's income. The Tribunal has considered these facts in proper perspective and held that the appellant is not entitled to any amount towards loss of income. In view of the above, there is no perversity in the findings of the Tribunal warranting interference by this Court.

11. In the result, the Civil Miscellaneous Appeal is dismissed. The second respondent/Insurance Company is directed to deposit the amount awarded by the Tribunal, 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 appellant is permitted to withdraw the award amount with accrued interest, after adjusting the amount if any, already withdrawn. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

krk/kj

To

1. The Motor Accidents Claims Tribunal
II Additional District Judge
Poonamallee.

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

+1cc to Mr. D.Bhaskaran, Advocate, S.R.No. 78371

+1cc to Mr. K.Varadha Kamaraj, Advocate, S.R.No. 78247

SPD(CO)
GN(11/01/2019)

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