

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.12.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2677 of 2018

1.Mariammal
2.Anjalai
3.Murugan
4.Prakash

.. Appellants/Petitioners

Vs.

1.Kalam Panchayathu @ Arumugam
2.Purushothaman
3.Thanikaivel

.. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 12.10.2017 made in M.A.C.T.O.P.No.3311 of 2015 on the file of Motor Accidents Claims Tribunal, Chief Court, Chennai.

For Appellants : M/s.Subadra

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the judgment and decree dated 12.10.2017 made in M.C.O.P.No.3311 of 2015 on the file of Motor Accidents Claims Tribunal, Chief Court, Chennai.

2.The appellants are the claimants in M.C.O.P.No.3311 of 2015 on the file of Motor Accidents Claims Tribunal, Chief Court, Chennai. They filed the above said claim petition claiming a sum of Rs.25,00,000/- as compensation for the death of one Kandan, who died in the accident that took place on 26.05.2007.

3.The Tribunal considering the pleadings, oral and documentary evidence, dismissed the claim petition as not maintainable holding that the appellants are entitled to get compensation only when the deceased died due to the injuries sustained in the motor vehicle accident.

4.Challenging the dismissal of the claim petition and seeking compensation, the appellants have come out with the present appeal.

5.The learned counsel appearing for the appellants contended that the Tribunal has erred in dismissing the claim petition without considering the evidence of P.W.2/eye witness, who has categorically stated that the driver of the tractor trailer suddenly and negligently moved the said vehicle and caused the accident, which lead to the death of the deceased. The Tribunal has failed to consider that the injured or the legal heirs of the deceased are entitled to get compensation in the accident, caused by use of motor vehicle. The Tribunal relying on Ex.P1/F.I.R. erroneously dismissed the claim petition. The Tribunal has failed to consider the object of the legislation under Section 5(j) of the Motor Vehicles Act, 1988. The Tribunal ought to have awarded compensation as claimed by the appellants. In support of her contention, she relied on the following judgment of this Court reported in 2004 (2) TN MAC 23 (DB) (United India Insurance Company Limited, Mettupalayam, Coimbatore District v. Amir Basha).

"13. It is clear from the above decisions and in view of the object of the enactments, both under the Motor Vehicles Act, 1939 and 1988 the expression "caused by" and "arising out of" have a wider connotation. Though the accident should be connected with the use of motor vehicle, but the said connection need not be direct and immediate. The expression "arising out of use of motor vehicle" as mentioned in Section 92-A of the 1939 Act and Section 165 of 1988 Act enlarges the field of protection made available to the victims of an accident and is in consonance with the beneficial object underlying the enactment. From the expression employed namely "accident arising out of the use of a motor vehicle" in the place of "accident caused by the use of motor vehicle", it is clear that the Legislature wanted to enlarge the scope of the word "use" and not to restrict it for denying compensation in deserving cases; accordingly we are of the view that the test should be whether the accident was reasonably proximate to the use of a motor vehicle, whether or not the motor vehicle was in motion then. We should not forget that these provisions are made in order to help the victims. We are of the view that restrictive interpretation should not be given for the word "use". We are also of the view that the expression "arising out of the use of

motor vehicle" has to be given a wider meaning. We are also of the view that "use of motor vehicle" need not necessarily be so intimate and closely direct as to make it "a motor accident" in the sense in which that expression is used in common parlance. Accordingly, we hold that the death of Absar arose out of the use of motor vehicle, and the claimants/respondents 1 and 2 herein are entitled to compensation for the death of their son Absar."

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 the appellants have filed the claim petition claiming compensation alleging that the third respondent/driver of the tractor trailer suddenly and negligently moved the said vehicle, while the deceased was on the top of the tractor trailer loading the sugar cane. Due to the negligent act of the tractor trailer of the third respondent, the sugarcane bundle in the hands of the deceased touched the electric wire and due to the injuries sustained by the deceased in the accident, he died on the way to hospital. From the award of the Tribunal, it is seen that P.W.1 and P.W.2 have deposed to that effect. But in Ex.P1/F.I.R., it was stated that while the deceased was loading sugar cane bundle, it touched the electric wire and he died. In the F.I.R., it was not stated that the third respondent negligently and suddenly moved the tractor trailer and caused the accident. The complainant, who lodged the complaint, was not examined before the Tribunal. The Tribunal considering Ex.P1/F.I.R. and evidence of P.W.1 and P.W.2, held that the deceased did not sustain injuries in the motor vehicle accident and thereby, died and the appellants are not entitled to get compensation for the death of the deceased under the Motor Vehicles Act. The Tribunal has dismissed the claim petition as not maintainable and there is no error in the said finding of the Tribunal warranting interference by this Court.

8. Accordingly, the award passed by the Tribunal is hereby confirmed and the Civil Miscellaneous Appeal is dismissed. No costs.

Sd/-

Assistant Registrar (CS-VIII)

//True copy//

Sub Assistant Registrar

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To

1. The Chief Judge,
The Motor Accidents Claims Tribunal,
Chennai.
2. The Section Officer,
VR Section, High Court,
Madras - 600 104.

+1cc to Mrs.M.Malar, Advocate SR.No.88481

C.M.A.No.2677 of 2018

EV(CO)
GMY(26/03/2019)



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