

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 14.11.2019
CORAM:
THE HONOURABLE MRS. JUSTICE R. HEMALATHA
CMA.No.2558 of 2006

1.Mekkavan @ Kesavan
2.Vasantha

...Appellants/Claimants

..Vs..

1.S.Karthikeyan

2.The Branch Manager,
United India Insurance Company Ltd.,
No.470, G.N.T.Road,
Redhills, Chennai - 52.

... Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and Judgement dated 20.03.2006 passed in M.C.O.P.No.435 of 2001 on the file of the Motor Accidents Claims Tribunal / Principal Sub Court, Chengalpattu.

Appellants : Mr.U.M.Ravichandran
R1 : No appearance
R2 : Mr.C.Paranthaman

J U D G M E N T

The appellants are the claimants in M.C.O.P.No.435 of 2001 on the file of the Motor Accidents Claims Tribunal / Principal Sub Court, Chengalpattu. They filed the claim petition under Sections 140 and 166 of the Motor Vehicles Act, 1988 seeking compensation of Rs.2,00,000/- for the death of their son Murugan, in a road accident on 29.04.2001.

2. The case of the claimants is that on 29.04.2001, the deceased Murugan was travelling in a mini lorry bearing Registration No. TN 21 N 1987 along with some other persons and at about 07.30 pm, the driver of the mini lorry drove the vehicle rashly and negligently and hit a tractor bearing Registration No. TN 21 X 0939, as a result whereof, Murugan sustained fatal injuries and died on the spot.

3. According to the claimants, the rash and negligent driving of the driver of the mini lorry belonging to the first

respondent, was the cause of the accident and that since the said mini lorry was insured with the second respondent / United India Insurance Company Limited, the owner and the insurer of the mini lorry are jointly and severally liable to pay compensation.

4. The owner of the mini lorry remained absent before the Tribunal and therefore, he was set ex-parte. The United India Insurance Company Limited contested the claim petition on all the grounds available to the insured. The learned Principal Subordinate Judge / Motor Accident Claims Tribunal, Chengalpattu while awarding compensation of Rs.1,62,000/- together with interest at the rate of 7.5% per annum, also concluded that since the deceased Murugan travelled in the mini lorry as an unauthorized passenger the Insurance Company is not liable to pay compensation and therefore directed the owner of the mini lorry to pay compensation to the claimants. Aggrieved over the orders passed by the Tribunal, the claimants have filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.

5. Mr.U.M.Ravichandran, learned counsel appearing for the appellants would contend that the deceased was a cleaner in the mini lorry on the date of the accident and therefore he would also be covered under the Insurance Policy.

6. Per contra, Mr.C.Paranthaman, learned counsel appearing for the second respondent would contend that the Tribunal after considering the oral and documentary evidence adduced on both sides had clearly come to the conclusion that the deceased was a gratuitous passenger on the date of the accident and therefore, the Insurance Company is not liable to pay compensation.

7. The deceased was aged 12 years on the date of the accident. A perusal of the orders passed by the Tribunal shows that the Tribunal did not accept the contention of the claimants that he was a cleaner in the mini lorry. The deceased who was just aged 12 years on the date of the accident, cannot be construed as a cleaner in the mini lorry. It is also pertinent to point out that the owner of the mini lorry remained absent before the Tribunal and no evidence was adduced on the side of the claimants to prove that the deceased was a cleaner.

8. As far as quantum of compensation is concerned, in the decision in Kishan Gopal and another v. Lala and others (cited supra), the Honourable Supreme Court of India has awarded compensation of Rs.5,00,000/- for the death of a boy aged 10 years. Therefore, by applying the said principles, I am of the

view that awarding compensation of Rs.5,00,000/- to the appellants / claimants would meet the ends of justice.

9. In the result,

(i) The Civil Miscellaneous Appeal is partly allowed. No costs.

(ii) The quantum of compensation awarded by the Tribunal is enhanced from Rs.1,62,000/- to Rs.5,00,000/-.

(iii) The appellants / claimants are directed to pay the court fee for the enhanced compensation amount, if any, and the Registry is directed to draft the decree only after the receipt of Court fee.

(iv) The first respondent is directed to deposit the entire compensation amount i.e., Rs.5,00,000/- (less the amount already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit to the credit of M.C.O.P.No.435 of 2001 on the file of the Motor Accidents Claims Tribunal / Principal Sub Court, Chengalpattu within a period of four weeks from the date of receipt of a copy of this order.

(v) On such deposit being made, the appellants / claimants are at liberty to withdraw the same as per the orders passed by the Tribunal after following due process of law. The apportionment made by the Tribunal shall be kept intact.

Sd/-

Asst.Registrar (co)

/true copy/

Sub Asst. Registrar

mtl

To

The Motor Accidents Claims Tribunal,
The Principal Subordinate Judge,
Chengalpattu.

copy to
The Section Officer
VR Section
High Court

+1cc to Mr.C.Paranthaman Advocate sr94396

CMA.No.2558 of 2006

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