

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.06.2019

CORAM:

THE HON'BLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.2752 of 2006

1.Peramayee

2.Selvi

..Appellants/Respondents 4 & 5

Vs.

1.Vembi @ Sundarammal

2.Kasthuri

3.Pavayee

4.Irusappan

..Respondents 1 to 4/Petitioners

5.A.Pichairaj

6.Padrakaliamman Sanga Kilai

Paal Pannai,

Peelamedu Nadar Street,

Madurai.

7.The Branch Manager,

National Insurance Company Ltd.,

Theppakulam, Madurai.

..Respondents 5 to 7/Respondents 1 to 3

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 23.03.2004 made in M.C.O.P.No.245 of 1996 on the file of Motor Accident Claims Tribunal, Sub-Court, Bhavani.

For Appellants : Mr.N.Manokaran

For R1 to R4 : Mr.T.Murugamanickam

For R7 : Mrs.N.B.Surekha

J U D G M E N T

This appeal is preferred by the appellants against the award of a sum of Rs.1,88,658/- towards compensation to the respondents 1 to 4/claimants due to the death of the deceased Vadivel in M.C.O.P.No.245 of 1996, dated 23.03.2004 on the file of Motor Accident Claims Tribunal, Sub-Court, Bhavani.

2.The case in brief is as follows:

On the fateful day, i.e., on 16.02.1995 the deceased Vadivel was standing on the southern side of the Servakaranpalayam, Bhavani - Appakudal Road, at 6.00 a.m., at that time, when he was trying to cross the road, a Tractor came from West to East direction in the northern side of the road at high speed, in a rash and negligent manner and dashed against the deceased. Due to the said impact, the deceased Vadivel was thrown away and sustained grievous injuries. He became unconscious and he was admitted in the Bhavani Government Hospital. After first aid treatment, he was rushed to the Saveetha Hospital, Erode and then to Coimbatore, K.G.Hospital and finally, inspite of best efforts taken, the deceased died on 18.02.1995.

3.The respondents 1 to 4/claimants herein, stating to be the legal heirs of the deceased filed a claim petition before the Tribunal for compensation. The Tribunal awarded a sum of Rs.1,88,658/- with interest at the rate of 9% per annum from the date of petition.

4.Now, the appellants herein have come up with this Civil Miscellaneous Appeal stating that they are the legal heirs of the deceased Vadivel and the Tribunal has erroneously granted compensation to the respondents 1 to 4.

5.The learned counsel for the appellants has submitted that the Tribunal has failed to note that the first appellant is the legally wedded wife and the second appellant herein is her daughter born to the deceased Vadivel. He also submitted that they already filed a claim petition in M.C.O.P.No.512 of 1995 before the Principal Sub-Court, Erode and the same was allowed as early as on 28.10.1996, that the said award has not been set aside, modified or reversed by the same Court or by the appellate Court in the manner known to law. The counsel further submitted that the compensation awarded by the Tribunal is very meagre.

6.The learned counsel for the respondents 1 to 4 has submitted that the Tribunal has rightly considered the materials and evidence available on record and awarded the compensation to the real legal heirs of the deceased. Further, the compensation awarded by the Tribunal is just and reasonable and hence, the judgment of the Tribunal does not require any interference in the hands of this Court.

7. Heard the learned counsel for the appellants and the learned counsel for the respondents 1 to 4/claimants and perused the materials available on record.

8. The learned counsel for the seventh respondent/Insurance Company has made his arguments in the similar lines as argued by the learned counsel for the respondents 1 to 4/claimants.

9. The main ground put forth by the learned counsel for the appellants is that the Tribunal failed to note that the first appellant is the legally wedded wife and the second appellant is her daughter born to the deceased Vadivel and their claim petition in M.C.O.P.No.512 of 1995 filed before the Principal Sub-Court, Erode was allowed on 28.10.1996.

10. The second appellant herein, has been examined as R.W.1 before the Tribunal. It was argued on behalf of the appellants herein before the Tribunal that they are the wife and daughter of the deceased and that there is no relationship between the deceased and the respondents 1 to 4 herein. It was also argued on behalf of them before the Tribunal that a petition in M.C.O.P.No.512 of 1995 has been filed before the Principal Sub-Court, Erode in which a sum of Rs.1,42,000/- has been ordered. Ex.R2 is the xerox copy of the order passed in M.C.O.P.No.512 of 1995 by the Principal Sub-Court, Erode. Ex.P3 is the xerox copy of the final order passed in M.C.O.P.No.512 of 1995 by the Principal Sub-Court, Erode. Ex.P4 is the Death Certificate of the deceased. In this connection, the Tribunal has relied upon the judgment of the Additional District Munsif Court, Bhavani in O.S.No.704 of 1995 dated 26.06.2000. The said original suit has been filed by the appellants herein for partition and permanent injunction in respect of the suit mentioned properties in which, after considering the facts and circumstances of the case, the Court has given a finding that the appellants herein are not the wife and daughter of the deceased and accordingly, dismissed the suit. Relying upon the said finding in the partition suit, the Tribunal has come to the conclusion that the appellants herein are not the legal heirs of the deceased and accordingly, awarded the compensation to the respondents 1 to 4 herein. This Court is not inclined to interfere with the said finding. Since this Court has come to the conclusion that the appellants herein are not the legal heirs of the deceased, there is no need to interfere with the judgment passed by the Tribunal in respect of compensation.

11. In the result, this Civil Miscellaneous Petition is dismissed, confirming the impugned judgment and decree passed by the Tribunal, however granting liberty to the appellants herein,

to approach the Tribunal with relevant documents, if any available to prove their legal status. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

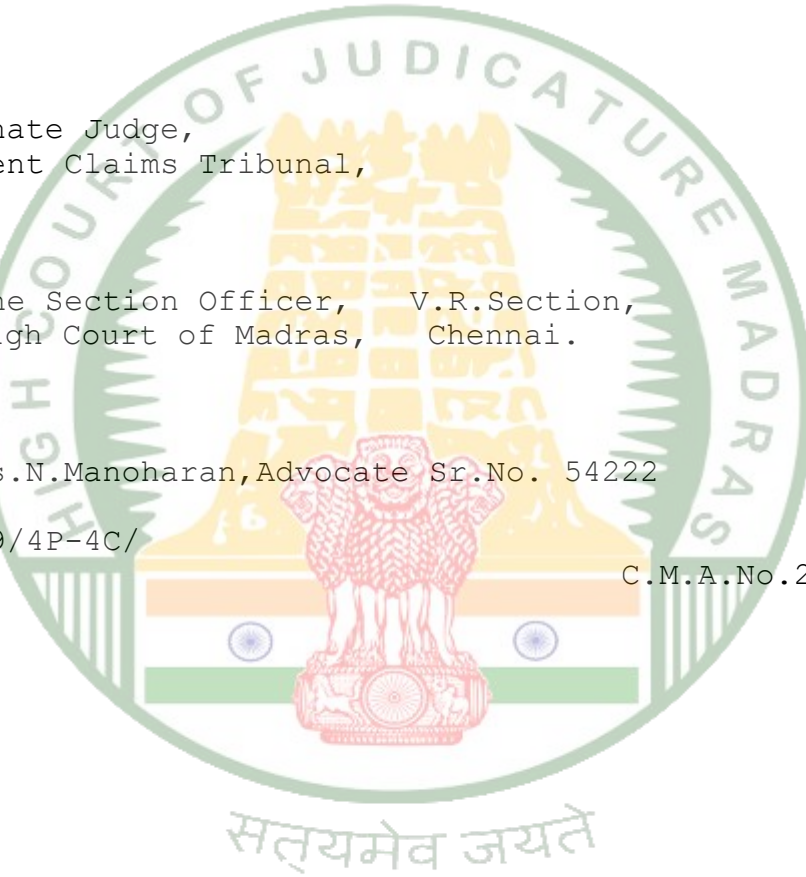
The Subordinate Judge,
Motor Accident Claims Tribunal,
Bhavani.

Copy to : The Section Officer, V.R.Section,
High Court of Madras, Chennai.

+1 cc to M/s.N.Manoharan, Advocate Sr.No. 54222

AKM/05.11.19/4P-4C/

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