

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 19.08.2019
CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.370 of 2009
and M.P.No.1 of 2009

1.Parimala Nayaki
2.Kanagavalli
3.Karthik
4.Durga

... Appellants/ Respondents 2 to 5

Vs

1.Kaliaperumal
2.Ramamirtham

... Respondents/ Petitioner

Appeal under Section 173 of the Motor Vehicles Act against the judgment and decree dated 13.04.2007 made in MCOP No.172 of 2004 on the file of the Motor Accidents Claims Tribunal, I Additional Sub Court, Mayiladuthurai.

For Appellants : Mr.S.Sounthar

For Respondents : No appearance

JUDGMENT

The case in brief, is as follows:

On 01.01.1997 at about 7.00 p.m., the deceased Padmanathan was riding the Hero Honda two-wheeler bearing Reg.No.TN-51-Y-4930, belonging to one Srinivasan who is the first respondent in the claim petition / husband of the first appellant herein, from Konerirajapuram Village to Poongudi Village and while riding so, he had fallen into a ditch opposite to one Singar Shop and due to the same, he sustained grievous injuries all over the body. He took treatment in the hospital, but he succumbed to the injuries on 06.07.1997. The parents of the deceased filed a claim petition before the Tribunal, claiming a sum of Rs.3,50,000/- as compensation. On consideration of the materials and evidence available on record, the Tribunal awarded a total compensation of Rs.50,000/- with interest at the rate of 7.5% per annum from the date of the judgment of the Tribunal, under the head 'no fault liability', to the claimants. The said sum has been directed to be paid out of the properties of the said Srinivasan, vesting with the appellants herein, who are the wife, son and daughters of the said Srinivasan, who died subsequent to the occurrence.

2.Challenging the same, the appellants have filed the present Civil Miscellaneous Appeal.

3.The learned counsel for the appellants has submitted that the Tribunal has failed to see that the deceased had no sanction or authority to drive the vehicle belonging to the said Srinivasan/husband of the first appellant, and hence the respondents / claimants are not entitled for any compensation. It is also submitted that the Tribunal has erred in awarding a sum of Rs.50,000/- towards 'no fault liability' to the claimants, when the fact remains that the accident had occurred solely due to the negligence on the part of the deceased.

4.It is seen that affidavit and petition copies due with regard to the respondents 1 and 2. Thus, the respondents 1 and 2 have not been properly served by the appellant, even at this length of time.

5.Considering the materials and evidence available on record, the Tribunal has rendered a finding that the accident had occurred due to the negligence on the part of the deceased himself and the same is not in dispute. Even though a stand has been taken on the side of the appellants herein that the deceased took the two-wheeler of the said Srinivasan without his permission, the same has not been substantiated in the counter statement filed by them before the Tribunal. After a threadbare analysis of the materials and evidence, the Tribunal came to the conclusion that even though the vehicle had not been taken by the deceased for the work belonging to the said Srinivasan, since the said Srinivasan happened to be the owner of the two-wheeler and the two-wheeler had not been insured with any Insurance Company, the said Srinivasan (owner) only is liable to pay the compensation. Since the owner of the vehicle died, the appellants who are the legal heirs of the owner, have been directed to pay the compensation to the claimants. Further, the Tribunal fixed the interest rate of 7.5% per annum for the said sum of Rs.50,000/- awarded under the head 'no fault liability', only from the date of judgment of the Tribunal, thus deleting the period of delay.

6.The Tribunal has rightly considered the materials and evidence and awarded a sum of Rs.50,000/- towards 'no fault liability' to the claimants and also correctly directed the legal heirs of the deceased Srinivasan to pay the same out of the properties of the said Srinivasan, vesting with them, in the absence of insurance coverage to the vehicle.

7.In view of the above stated circumstances, the Civil Miscellaneous Appeal is dismissed. No costs. Consequently, the connected miscellaneous petition is closed. The appellants are

directed to pay the compensation, as ordered by the Tribunal, less the amount if any already deposited, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the respondents / claimants shall withdraw the same, on making proper application before the Tribunal.

Sd/-
Assistant Registrar(AD I)

//True Copy//

Sub Assistant Registrar

KM

To

1.The I Additional Sub Court ,
Motor Accidents Claims Tribunal
Mayiladuthurai.

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

+1cc to Mr.s.Sounthar , Advocate SR.No. 70395

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A.SK(17/02/2020)