

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.08.2019

CORAM

THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

CMA No.2524 of 2015

New India Assurance
Company Limited
Division Office
Thiruvannamali

... Appellant/2nd Respondent

Vs

1.Kamala Hasan Ramesh
2.Rajendran
3.Mohamed Sharfudin

... Respondents/Respondents 1 & 2

Prayer:- This Civil Miscellaneous Appeal has been filed under Section 173 of Motor Vehicles Act, 1988 against the judgment and decree dated 25.06.2014 in MCOP No.139 of 2013 on the file of the Motor Accident Claims Tribunal (III Additional District Munsif Court) at Kallakurichi, Villupuram District.

For Appellant : M/s.R.Sree Vidhya

For R1 & R2 : Mr.A.G.Rajan

JUDGMENT

This Civil Miscellaneous Appeal has been filed by the appellant/insurance company against the award dated 25.06.2014 in MCOP No.139 of 2013 on the file of the Motor Accident Claims Tribunal (III Additional District Munsif Court) at Kallakurichi.

2. Heard the learned counsel appearing for the appellant and perused the materials available on record.

3. Brief facts leading to the claim application are as follows:

On 16.04.2011, at about 11 hrs when the deceased was proceeding in a Motor Cycle bearing Registration No.TN-25-P-

1999 near Sankara Nattar Sugar cane field at kaduvannur village, he suddenly lost his control and dashed against a two wheeler. As a result of which, the deceased sustained several head injuries and died on the way to the hospital. Hence, the legal heirs of the deceased, made a claim petition before the Tribunal seeking Rs.8,00,000/- as compensation.

4. In the grounds of appeal the appellant/Insurance Company has contended that the Tribunal erroneously awarded huge compensation and the Tribunal failed to appreciate the evidence and documents and fastened the liability on this respondent. The accident has occurred only due to rash and negligent driving on the part of the rider of the two wheeler only and not due to the act of the driver of the bus. It is seen from records that only 3 documents have been produced before the Tribunal namely F.I.R, post mortem report and the investigation report of the R.T.O, which is not suffice to conclude that who was the tortfeasor of the accident.

5. Heard M/s.R.Sree Vidhya, learned counsel appearing for the appellant/Insurance Company and Mr.A.G.Rajan, learned counsel appearing for the respondents 1 and 2 and perused all the materials available on record.

6. On a perusal of records it is seen that the Tribunal failed to verify that the claimants are the legal heirs of the deceased and they are dependents of the deceased, being the deceased was an unmarried person. It is further seen that the deceased was not the owner of the two wheeler involved in the accident and the owner and insurer of the two wheeler was not added as respondents before the Tribunal. Without considering the said facts the tribunal, fixed the negligence on the part of the driver of the bus and awarded compensation, which is not just and fair and the sum awarded under various heads are without any basis.

7. It is further observed that the claimants who claims themselves as brothers have not produced any certificate in support of their proof and it is also seen that the deceased was not a married person and at the time of accident, the first claimant was aged about 31 and the second claimant was aged about 28 who have contended before the Tribunal that accident occurred while the deceased/claimant's brother was proceeding in his two wheeler. These aspects were not discussed before the tribunal. In the absence of any proof that the claimants are the legal heirs of the deceased, the award passed by the tribunal is only based on the document relating to the accident as well as, the conventional loss that arises due to death of an unmarried person, which needs interference by this Court.

8.As per the Interim Order of this Court, dated 06.11.2015, the appellant/Insurance has deposited the entire compensation amount and the claimants have withdrawn the 50% of the award amount without producing the legal heirship certificate. It is represented before this Court that till date the claimants who claimed themselves as legal heirs of the deceased and contested the case, have not come forward to produce the relevant documents. This Court by taking into considering the non production of relevant documents by the claimants and pendency of the present year, directs the Insurance Company to withdraw the remaining 50% of the award amount with accrued interest lying in the deposit in MCOP No. 139 of 2013 on the file of Motor Accidents Claims Tribunal (III Additional District Munsif Court), Kallakurichi.

In view of the above, the Civil Miscellaneous Appeal is partly allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-VII)

//True Copy//

Sub Assistant Registrar

vsn

TO

1.The III Additional District Munsif Court,
Kallakurichi.

Copy To

The Section Officer,
V.R. Section, High Court,
Madras.

+1cc to Mr.R.Sreevidhya, Advocate, S.R.No.67227

C.M.A.No.2524 of 2015
and
C.M.P.No.1 of 2013

VG II(CO)
GN(11/03/2020)