

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.03.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.425 of 2018

K.Monisha (Minor) .. Appellant/Petitioner
(Rep by her grandmother
& natural guardian)
S.Subbulakshmi

Vs.

1.M/s.Om D'signs,
Old No.50, New No.12, V.C. Garden,
1st Street, R.A.Puram,
Mandaveli, Chennai - 28.

2.The Oriental Insurance Company Ltd,
New No.216, Old No.115, Prakasam Salai,
Broadway, Chennai - 108. .. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 07.01.2015 made in M.C.O.P.No.5088 of 2012 on the file of the Motor Accident Claims Tribunal, III Judge, Small Causes Court, Chennai.

For Appellant : Ms.Ramya V.Rao
For R2 : Mr.S.Manohar

J U D G M E N T

The Civil Miscellaneous Appeal is filed by the appellant/claimant seeking enhancement of compensation granted by the Tribunal in the award dated 07.01.2015 made in M.C.O.P.No.5088 of 2012 on the file of the Motor Accident Claims Tribunal, III Judge, Small Causes Court, Chennai.

2.The appellant is claimant in M.C.O.P.No.5088 of 2012 on the file of the Motor Accident Claims Tribunal, III Judge, Small Causes Court, Chennai. The appellant filed the said claim

petition claiming a sum of Rs.12,00,000/- as compensation for the death of one Latha Maheswari, who died in the accident that took place on 25.10.2009. The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the Eicher lorry belonging to 1st respondent and directed the 1st respondent to pay a sum of Rs.7,55,000/- as compensation to the appellant. Not being satisfied with the amount awarded by the Tribunal, the appellant has come out with the present appeal challenging the portion of the award dismissing the claim petition against 2nd respondent and seeking enhancement of compensation.

3.By consent of both parties, the appeal is taken up for final disposal at the stage of admission itself.

4.Heard the learned counsel appearing for the appellant as well as 2nd respondent and perused the materials on record.

5.The contention of the learned counsel appearing for the appellant that the deceased travelled in the lorry as a coolie and she is not a gratuitous passenger, is contrary to the materials on record. From the materials on record, it is seen, P.W.1 who is the mother-in-law of the deceased categorically stated that deceased is her daughter-in-law and while coming to the native place at Pudukottai along with her child, the accident had occurred. The driver of the lorry is the husband of the deceased and son of the P.W.1. The appellant has not let in any evidence to show that the deceased was a coolie working under 1st respondent / owner of the lorry. The Tribunal considering the above materials, held that the Insurance Policy issued by the 2nd respondent do not cover gratuitous passenger and dismissed the claim petition against 2nd respondent Insurance Company on the ground that the deceased travelled as a gratuitous passenger in the lorry belonging to the 1st respondent. There is no perversity in the finding of the Tribunal warranting interference by this Court.

(*)6. In the result, this Civil Miscellaneous Appeal is dismissed and sum of Rs.7,55,000/- awarded by the Tribunal as compensation to the appellant along with interest and costs is confirmed. The 1st respondent is directed to deposit the award amount along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P.No.5088 of 2012. Appellant being a minor, the award

amount is directed to be deposited in any one of the Nationalised Bank till she attains majority. The grandmother of the minor is permitted to withdraw the accrued interest once in three months for the welfare of the minor. No costs.

Sd/-
Assistant Registrar (CS-VI)

(*) Para 6 of the order dated 06/03/2019
deleted and substituted as per order of
this Court dated 06/02/2020

//True Copy//

Sub Assistant Registrar

mtl

To

Corrected order to be substituted to the
order already despatched on 25/10/2019

1.The III Judge,
Small Causes Court,
Motor Accidents Claims Tribunal,
Chennai.

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

+1 cc to Mr.A.N.Viswanatha Rao, Advocate, S.R.No.20880
+1 cc to Mr.S.Manohar, Advocate, S.R.No.20875

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NRL(CO)

SSM(18/09/2019)

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