

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.02.2020

CORAM:

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.110 of 2013

1.V.Kamalammal
2.V.Uma
3.Minor.V.Srinivasan
4.Minor.V.Hemalatha
5.Minor.V.Menaka
6.P.Jayakumar ... Appellants/ Petitioners

(Appellants 3 to 5 are represented by their mother next friend guardian 2nd appellant V.Uma)
Vs.

1.Mr.Kishanlal Roshanlal Aurora,
2.The United Insurance Company Limited,
Cambatta building, 42, Maharishi Karve Marg,
P.B.No.11051,
Mumbai 400 020. ... Respondents/ Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 09.06.2004 made in M.C.O.P.No.509 of 2002 on the file of Motor Accident Claims Tribunal, Fast Track Court, (Additional District Judge) Tirupattur.

For Appellant : Mr.S.Naganathan

For R2 : Mr.C.Paranthaman

JUDGMENT

The Civil Miscellaneous Appeal is filed for enhancement of compensation granted by the Tribunal in the award dated 09.06.2004 made in M.C.O.P.No.509 of 2002 on the file of the Motor Accident Claims Tribunal, Fast Track Court, Additional District Judge, Tirupattur.

2.The appellants are claimants in M.C.O.P.No.509 of 2002 on the file of the Motor Accident Claims Tribunal, Fast Track Court, Additional District Judge, Tirupattur. Initially the appellants were filed the said claim petition, claiming a sum of Rs.3,00,000/- as compensation for the injuries sustained by

them in the accident that took place on 18.04.1996.

3. The case of the appellants is that on 18.04.1996 around 01.30 a.m., on the N.H.4 Road near Thambehalli village, the said Murugan @ Velayutham an employee working under first respondent drove the jeep, which, due to the mechanical defect in the vehicle fell in to a 20 feet depth pit by hitting the road side wall and the said Murugan died on the spot. The said Murugan @ Velayutham. The first appellant is the mother of the deceased Murugan @ Velayutham, the second appellant is the wife of the deceased and appellants three to five are children of the deceased.

4.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 jeep bus belonging to the 1st respondent and directed the 2nd respondent/Insurance Company to pay a sum of Rs.50,000/- as compensation to the appellants.

5.Not being satisfied with the quantum of compensation awarded by the Tribunal, the appellants have come out with the present appeal seeking enhancement of compensation.

6.Heard the learned counsel appearing for the appellants as well as the learned counsel appearing for the 2nd respondent/Insurance Company and perused all the materials available on record.

7. The case of the appellants is that the deceased Murugan was doing auto mechanic work, to show that the deceased was doing auto mechanic work the appellants have not produced any evidence and also not produced any evidence to show that the deceased met with an accident during the course of the employment and also nothing on record to show that he was working under the first respondent. The Tribunal also held as under:

For instituting a case under Section 166 of Motor Vehicle Act, this Section does not create an independent right for any person to claim compensation before the Tribunal. It creates only a special forum and a cheaper and expeditious remedy available to him under common law and the of Torts. Therefore, the claimants have to establish actionable negligence on the part of the driver of the vehicle and only in that event he could hold the owner of the vehicle vicariously responsible for the actionable negligence. In this case the very action of the driver

himself is the basis for claim, which itself is not maintainable under the common law and in the Law of Torts. Further from the averments made in the petitioner and in the absence of any clear evidence, the petitioners have not established that the deceased was working with the first respondent at the time of accident to claim the compensation under the workmen's compensation Act also. Similar kind of situations, the Andhra Pradesh High Court in Vadda Anjanamma and others Vs. Chennakesavalu and another reported in 1993 ACJ.713, wherein the Tribunal's finding that due to the rash and negligent driving of the tractor by the deceased, its front wheel stub-axle was cut and the tractor turned turtle resulting in his death and the Tribunal further held that the claimants are not entitled to any compensation except under no fault liability which was awarded to them and this finding was upheld by the Hon'ble High Court of Andhra Pradesh, and in another case reported in 1992 ACJ.873 in,

Radamma and another Vs. Oriental Fire and Genl. Ins. Co. Ltd., and others.

On the finding that the accident was due to the rash and negligent driving of the scooterist, while the Tribunal dismissed the claim petition filed by the claimants, the legal heirs of the scooterist, the Hon'ble High Court of Andhra Pradesh while upholding the finding of the Tribunal, however allowed compensation under no fault liability.

8. It is clear that the claimants have not established the negligence on the part of the driver of the vehicle and only in that event he could not hold the owner of the vehicle is vicariously liable for the negligence and in the instant case, the action of the driver himself is the basis for the claimant which itself is not maintainable in the compensation and in the law of torts. More over, the appellants have not established that the deceased was working with the first respondent, at the time of the accident to claim the compensation under Workmen's Compensation Act,

9. In such view of the matter, the Tribunal was right in awarding the compensation of Rs.50,000/- under no fault liability. This Court finds that there is no perversity in the order of the Tribunal.

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10. In the result, this Civil Miscellaneous Appeal is dismissed and sum of Rs.50,000/- awarded by the Tribunal as

compensation to the appellants 1 to 5/claimants, along with interest and costs is confirmed. The 2nd respondent/Insurance Company 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.272 of 2009. On such deposit, the appellants 1 to 5/claimants permitted to withdraw their share of the award amount, on the basis of apportionment fixed by the Tribunal, along with interest and costs, after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal. No costs.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

sbn

To

1.The Additional District Judge
Motor Accident Claims Tribunal,
Fast Track Court,
Tirupattur.

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

2 ccs o MR.C. Paranthaman, Advocate, Sr. 12179

C.M.A.No.110 of 2013

RSV (CO)
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