

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.02.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.624 of 2020

1.Nithya

Jayapal (died)

2.Dhanalakshmi

3.Minor.Tharaksimma ... Appellants/Petitioner

(Minor 3rd appellant is represented by
his guardian and next friend, 1st appellant)

Vs.

1.Sudhakar (Set exparte before the Tribunal)

2.Bharti AXA General Insurance Company Limited,
2nd Floor, Metro Plaza,
No.162, Anna Salai,
Chennai - 600 002. ... Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 06.03.2019, made in M.C.O.P.No.309 of 2014 on the file of the Motor Accident Claims Tribunal, Sub Court, Gingee.

For Appellants : Mr.A.Sathishkumar
For R2 : Ms.K.Poomalai

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellants against the order of dismissal dated 06.03.2019, made in M.C.O.P.No.309 of 2014 on the file of the Motor Accident Claims Tribunal, Sub Court, Gingee.

2.The appellants are the claimants in M.C.O.P.No.309 of 2014 on the file of the Motor Accident Claims Tribunal, Sub Court, Gingee. They filed the said claim petition, claiming a sum of Rs.20,00,000/- as compensation for the death of one Sathish

Kumar, who died in the accident that took place on 19.01.2014.

3. According to the appellants, on 19.01.2014 at about 07.15 P.M., while the deceased Sathish Kumar was riding the motorcycle bearing Registration No.TN 19 Z 1606 on Murukkampakkam - Madhuranthagam main road, near Arunkunam, opposite to Captain Pannai, the rider of the motorcycle bearing Registration No.TN 19 Y 4846 who came in the opposite direction in a rash and negligent manner dashed against the said Sathish Kumar and caused the accident. In the accident, the said Sathish Kumar sustained multiple injuries and he was taken to the Government Hospital, Madhuranthagam and thereafter he was referred to the Government Hospital, Chengalpet. In spite of treatment, the said Sathish Kumar, succumbed to injuries in the hospital. Therefore, the appellants filed the above said claim petition, claiming a sum of Rs.20,00,000/- as compensation for the death of said Sathish Kumar against the respondents 1 and 2 being the owner and insurer of the motorcycle bearing Registration No.TN 19 Z 1606 respectively.

4. The 1st respondent, the owner of the motorcycle bearing Registration No.TN 19 Z 1606 remained exparte before the Tribunal.

5. The 2nd respondent-Insurance Company, the insurer of the motorcycle bearing Registration No.TN 19 Z 1606 filed counter statement and contended that the accident has occurred only due to rash and negligent riding by the rider of the motorcycle bearing Registration No.TN 19 Y 4846 and the Madurantagam Police had registered the F.I.R. in Crime No.94 of 2014 only against the rider of the motorcycle bearing Registration No.TN 19 Y 4846. The Madurantagam Police had also filed the charge sheet against the rider of the motorcycle bearing Registration No.TN 19 Y 4846 and rough sketch also supports the F.I.R. The rider, owner and insurer of the motorcycle bearing Registration No.TN 19 Y 4846 were not impleaded as party in the claim petition. As per the F.I.R., only the rider of the motorcycle bearing Registration No.TN 19 Y 4846 is responsible for the accident and there is no fault on the part of the deceased. The deceased, the rider of the motorcycle steps into the shoes of the owner of the motorcycle and the rider of the motorcycle cannot be termed as 3rd party as the liability of insurer is only to indemnify the liability of insured-owner of motorcycle. The victimizer and the victim cannot be the same person and hence, this claim petition is not at all maintainable. The appellants have to prove that they are the legal heirs of the deceased by producing valid documents. The appellants have to prove the age, avocation and income of the deceased by producing valid documents. In any event, the quantum of compensation claimed by the claimants is

highly excessive and prayed for dismissal of the claim petition.

6. Before the Tribunal, the 1st appellant examined herself as P.W.1 and one Prabakaran was examined as P.W.2 and 9 documents were marked as Exs.P1 to P9. On behalf of the 2nd respondent-Insurance Company, one Sylappakalyan was examined as R.W.1 and copy of the Policy was marked as Ex.R1.

7. The Tribunal considering the pleadings, oral and documentary evidence, dismissed the claim petition on the ground that there is no negligence attributed as against the deceased-rider of the motorcycle, which was insured with the 2nd respondent-Insurance Company.

8. Challenging the said order of dismissal dated 06.03.2019, made in M.C.O.P.No.309 of 2014, the appellants have come out with the present appeal.

9. The learned counsel appearing for the appellants contended that the Tribunal erred in dismissing the claim petition. Even if appellants have quoted wrong provision of law, the Tribunal ought to have converted the same under Section 163(A) of the Motor Vehicles Act and awarded compensation. The Hon'ble Apex Court and this Court in number of cases held that quoting wrong provision of law cannot be reason to defeat the claim. The deceased was working as Driver and was earning a sum of Rs.15,000/- per month. The Tribunal ought to have awarded just compensation and prayed for setting aside the award of the Tribunal and for granting compensation.

10. The learned counsel appearing for the 2nd respondent-Insurance Company made submissions supporting the award passed by the Tribunal and prayed for dismissal of the appeal.

11. Heard the learned counsel appearing for the appellants as well as the learned counsel appearing for the 2nd respondent and perused the entire materials on record.

12. From the materials available on record it is seen that the appellants have filed the claim petition under Section 166 (1) of Motor Vehicles Act. The appellants have contended that while the deceased Sathish Kumar was riding the motorcycle bearing Registration No.TN 19 Z 1606 along with his friend towards Madhuranthagam, near Arunkunam, opposite to Captain Pannai, the rider of the TVS Super XL bearing Registration No.TN 19 Y 4846 who came in a rash and negligent manner from opposite direction dashed against the motorcycle driven by the said Sathish Kumar and the said Sathish Kumar died due to the injuries sustained by him in the accident caused by the rider of

the TVS Super XL bearing Registration No.TN 19 Y 4846. The appellants did not implead the driver and owner of the motorcycle bearing Registration No.TN 19 Y 4846, which caused accident as the said vehicle was not insured with any Insurance Company. The Tribunal considering the pleadings, oral and documentary evidence, held that there is no negligence on the part of the deceased and the claim petition filed under Section 166 (1) of the Motor Vehicles Act, 1988 against the owner and insurer of the motorcycle driven by the deceased is not maintainable.

13.It is the contention of the learned counsel appearing for the appellants that when the appellants have quoted wrong provision of law, the Tribunal ought to have converted the provision under Section 163(A) of the Motor Vehicles Act,1988 and awarded just compensation. The said contention is contrary to the facts. Further, the appellants have contended that the deceased was working as Driver and was earning a sum of Rs.15,000/- per month. The claim petition under Section 163(A) is not maintainable when annual income of the deceased exceeds Rs.40,000/-. When the appellants have come out with the specific case that accident has occurred only due to rash and negligent riding by the rider of the TVS Super XL bearing Registration No.TN 19 Y 4846, they ought to have made claim against the rider, owner and insurer of the TVS Super XL bearing Registration No.TN 19 Y 4846 and proved the negligence for getting compensation. The Tribunal considering all the materials in proper perspective by giving valid reason, dismissed the claim petition and there is no error warranting interference by this court.

14.For the above reason, this Civil Miscellaneous Appeal is dismissed confirming the order of the Tribunal dated 06.03.2019 made in M.C.O.P.No.309 of 2014. No costs.

सत्यमेव जयते
Sd/-

Assistant Registrar

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//True Copy//

Sub Assistant Registrar

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To

1.Motor Accident Claims Tribunal,
The Subordinate Judge,
Gingee.

+2ccs to Mr.C.Thangaraju, Advocate, sr no.14324
+1cc to Ms.K.Poomalai, Advocate, sr no.14069

C.M.A.No.624 of 2020

PP (CO)
RMP (19/01/2021)



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