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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.07.2020

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.2637 of 2009

N.Padma

... Appellant/Claimant

Vs.

1. S.Rajeswari

2. United India Insurance Co. Ltd.,
HDFC Chuss General Insurance Company Ltd.,
No.117, Anna Salai,
Chennai - 600 002.

... Respondents/Respondents

Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act 1988, against the judgment and decreetal order dated 16.07.2007 made in M.C.O.P.No.833 of 2002 on the file of the Motor Accidents Claims Tribunal, Additional District Judge (Fast Track Court No.II), Chennai.

For Appellant : Mr.P.L.Narayanan

For R2 : Mr.D.Bhaskaran

R1 - Served - No Appearance

Judgment

This Civil Miscellaneous Appeal has been filed against the judgment and decreetal order dated 16.07.2007 made in M.C.O.P.No.833 of 2002 on the file of the Motor Accidents Claims Tribunal, Additional District Judge (Fast Track Court No.II), Chennai.

2. The case of the appellant is that on 03.02.2001 at about 10.30 a.m., her grandson, named Veeraraghavan, was carried as a pillion rider in a Motorcycle bearing Registration No.TN-09-A-0772 by one Antony Raj from Sindhi College towards Kundrathur on Poonamallee High Road. When the Motorcycle was near Savitha Hospital Bus stop, Poonamallee High Road, the first respondent's tanker lorry bearing Registration No. TN-23-A-5762 came in a rash and negligent manner and collided against it. As a result,



the Veeraraghavan was thrown away from the motorcycle and succumbed to death. At the time of accident, he was aged 18 and was a college student. Since he died in the accident, the appellant has filed a petition before the Motor Accidents Claims Tribunal, Additional District Judge (Fast Track Court No.II), Chennai, claiming Rs.3,43,000/- as compensation under various heads.

3. The second respondent, who is the insurer of the first respondent's vehicle, filed a counter affidavit before the Tribunal stating that since the first respondent had not intimated the above accident, they were not responsible for the appellant's claim. Further, it has been stated that the driver of the first respondent had no valid driving licence on the date of accident and the appellant has to strictly prove that the first respondent's driver had possessed valid driving licence on the date of accident. Moreover, it has been stated that the alleged age of the deceased were not true and the amount of compensation claimed was highly excessive.

4. During the trial, on the side of the appellant, the appellant herself was examined as PW1 and Exs.P1 to P10 were marked. On the side of the respondents, neither any witness was examined nor any document was marked.

5. The Tribunal, after considering the pleadings, oral and documentary evidence, dismissed the petition as against the appellant. Aggrieved by the same, the appellant has come before this Court.

6. Heard the learned counsel for the appellant and the learned counsel for the second respondent, and perused the materials available on record.

7. The appellant examined as PW1 before the Tribunal and stated in her evidence that she had not seen the occurrence directly, and on the date of accident, she received a call from her grandson's friend that her grandson was died in the accident. In this case, no eyewitness was examined on the side of the appellant. Also the appellant has not produced the legal heir certificate of the deceased to establish that she was the legal heir of the deceased. Hence, the Tribunal has rejected her claim stating that she was not entitled to receive any compensation for the death of the deceased and the second respondent was not liable to pay any compensation to her.

8. However, as per Section 163A of the Motor Vehicles Act 1988, the appellant was not required to prove the rash and negligent driving of the first respondent's driver. The Tribunal without considering the said fact wrongly exonerated the



Insurance company from liability to pay compensation to the appellant. Further, the appellant has produced Ex.P8 Legal heir certificate of the deceased's grandfather, wherein, it is clearly found that the appellant is grandmother of the deceased. The Tribunal without considering the said fact erroneously dismissed the claim of the appellant stating that the appellant has failed to establish that she was the legal heir of the deceased. Hence, in view of the above circumstances, this Court is inclined to remand the matter back to the Trial Court to reconsider the matter afresh and pass appropriate orders.

9. Accordingly, this Civil Miscellaneous Appeal is disposed of and the the Additional District Judge (Motor Accidents Claims Tribunal), Fast Track Court No.II, Chennai, is directed to reconsider the matter afresh and pass appropriate orders within a period of three months from the date of receipt of a copy of this Judgment. The parties are permitted to produce any fresh evidence as per procedure under law. No costs.

Sd/-

Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

raja

To

1.The Additional District Judge
(Motor Accidents Claims Tribunal),
Fast Track Court No.II, Chennai.

Copy to:
The Section Officer,
VR Section, High Court, Madras.

C.M.A.No.2637 of 2009

BS(CO)
CB(27/08/2021)