

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.02.2020

CORAM:

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.1517 of 2013

1. N.Mariammal
 2. N.Rajeswari
 3. A.Selvi
- ... Appellants/Petitioners

Vs.

- 1.R.R. Sekaran
 - 2.The United India Insurance Co. Ltd.,
Dharmapuri, having D.O. at No.104-A,
Peramanur main Road,
Peramanur, Salem - 7.
 - 3.The New India Assurance Co. Ltd.,
Premier Complex,
Yercaud - Junction main Road,
Alagapuram, Salem.
- ... Respondents/ Respondents

Prayer: Civil Miscellaneous Appeal filed under section 173 of Motor Vehicles Act, 1988 to set aside the Judgment and Decree dated 26.04.2011 made in M.C.O.P.No.740 of 2006 on the file of the Motor Accident Claims Tribunal/I Additional District Judge - Salem.

For Appellant : Mr.D. Balachandran
For Respondent-1 : Mr.P.Jagadeesan
For Respondent-2 : Mrs.I.Malar
For Respondent-3 : Mr.R.Sivakumar

J U D G M E N T

This Appeal has been filed by the appellants/claimants against the dismissal award made in M.C.O.P.No.740 of 2006 on the file of the Motor Accident Claims Tribunal/I Additional District Judge - Salem.

2. The first appellant is the wife of the deceased and the 2nd and 3rd appellants are the daughters of the deceased. The first respondent is the owner of the vehicle and the third respondent is the insurer of the vehicle.

3. Brief facts of the case is as follows:

On 20.09.2003 at about 7.00 a.m when the deceased was walking on the extreme left side of the Salem to Attur main Road, near Masinaickenpatti, near Swamy Mahal Kalyana Mandapam, a Toyota Qualls car bearing Registration No.TN-30-J-8888 belonging to the first respondent which was driven by its driver in a rash and negligent manner and hit against the deceased. The accident occurred due to the rash and negligent act of the driver of the car. As a result of which the deceased was succumbed to the injuries on the spot itself. Hence the legal heirs of the deceased/appellants herein filed a claim petition before the Tribunal seeking Rs.7,00,000/- as compensation.

4.The Tribunal after analysing the materials available before the Tribunal has awarded Rs.1,50,000/- as compensation.

5.Not being satisfied with the award passed by the Tribunal, the appellants have filed the present Civil Miscellaneous Appeal.

6.The learned counsel appearing for the appellants/Claimants would contend that the deceased was a coolie' in Naina Rice Mill, Ayodhyapattanam and thereby earning Rs.4,500/- per month. But, the Tribunal has not considered the same and has not awarded any amount towards the head loss of income. He would further contend that the Tribunal has awarded only towards the head loss of love and affection and failed to award amount towards other heads such as Medical expenses, pain and sufferings etc.,

7.The learned counsel appearing for the 1st respondent/owner of the alleged vehicle involved in the accident submitted that the vehicle was insured and it covers the third party risk. Hence, the Insurance Company is liable to pay the entire compensation awarded by the Tribunal.

8.The learned counsel appearing for the 2nd respondent submitted that they are unnecessary party to this proceedings and the alleged vehicle involved in the accident was not insured with them. Hence, prays to discharge them from this appeal.

9.The learned counsel appearing for the 3rd respondent submitted that the accident occurred due to the negligent attitude of the deceased, who without noticing the vehicle

coming in the opposite direction had crossed the road. Hence, the Tribunal ought to have fixed contributory negligence on the part of the deceased.

10. Heard the learned counsel for the appellant and the learned counsel appearing for the 1st, 2nd and 3rd respondents and perused the records meticulously and carefully.

11. The Tribunal has discussed about the negligence aspect elaborately and raised a question that whether the accident took place due to the rash and negligent driving of the driver of the 1st respondent Toyota Qualis Car bearing Registration No. TN-30-J8888 or not? Eyewitness to the occurrence was examined as P.W.2, who in his evidence has stated that negligence on the part of the driver of the car is the cause for the accident. Ex.P.1/ F.I.R corroborates with the case of the claimants. Ex.P.4/Motor Vehicles Inspectors report for the Toyota qualis car reveals that there was no mechanical defect in the car. The driver of the 1st respondent car appeared before the Judicial Magistrate No.5, Salem in C.C.No.601/2003 and he was convicted U/Secs.279 & 304(A) of IPC and he also paid the fine amount. Therefore, based on the above evidence and witnesses and the admission of guilty by the driver of the offending vehicle before the Trial Court by way of paying fine, the Tribunal arrived at a conclusion that the accident had occurred only due to the rash and negligent act of the driver of the car. Based on the above findings the Tribunal concluded that the first respondent/owner of the car and Insurer of the car/ third respondent/New India Insurance Company are jointly and severally liable to pay the compensation.

12. Before advertng further the sum and substance of the case is whether the appellants are entitled to receive compensation or not. This Court while re-appreciating the evidence and documents observed that the claimants 2 and 3 have produced Exs.P.11 and 12/Original Records, which reveals that the deceased was their father, but they have not let in legal heirship certificate to substantiate their case that they are the legal heirs of the deceased. It is also seen from records that the second and third appellants are married and they are not surviving depending upon the income of the deceased. Hence, the Tribunal arrived at a conclusion that the appellants are entitled for compensation only under the head loss of love and affection and fixed Rs.50,000/- each for the family members of the deceased. As there were 3 family members Rs.1,50,000/- (Rs.50,000 x 3) was awarded towards the head loss of love and affection and the same was quantified as total compensation. Hence, the findings of the Tribunal are persuasive and no interference is called for and the same is confirmed as such.

13.In the result, this appeal is dismissed. No costs. The first respondent/owner of the vehicle and the third respondent/New India Assurance Company are jointly and severally liable to pay the compensation amount and deposit the same with interests and costs, as awarded by the Claims Tribunal, less the amount already deposited, if any, within a period of eight weeks, from the date of receipt of a copy of this judgment. On such deposit being made, the appellants are directed to withdraw the amount. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

smn

To

1.The I Additional District Judge,
Motor Accident Claims Tribunal
Salem.

Copy to

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

+1 cc to Mr.D.Balachandran,Advocate Sr.No. 17614

+1 cc to Mr.I.Malar,Advocate Sr.No. 17663

+1 cc to Mr.R.Sivakumar,Advocate Sr.No. 17576

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RMP(19/12/2020)

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