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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.02.2020

C O R A M

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.3696 of 2013

The Branch Manager,
M/s.United India Insurance Company Ltd.
Branch Office
No.198, Manjunatha Complex,
II Floor, CMH Road,
Bangalore - 560 030.

: Appellant/2nd Respondent

Versus

1. Ariyamma D/o. M.G.R. @ Chennappan

2. Thanjammal D/o. M.G.R. @ Chennappan

: Respondents 1 & 2/Claimants

3. T. Kuppusamy S/o. Theerthamalai

: 3rd Respondent/1st Respondent

(R-3 remained set ex-parte before the Tribunal)

Prayer: Civil Miscellaneous Appeal filed against the order and decree dated 21.10.2011 made in M.C.O.P.No.455 of 2008 on the file of the Motor Accident Claims Tribunal, (Principal District Judge), at Krishnagiri.

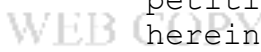
For Appellant : Ms.R.Sreevidhya

For Respondent1&2 : Mr.M. Sriram

For Respondent-3 : No Appearance

J U D G M E N T

The Insurance company has filed this appeal against the Award and decree in M.C.O.P.No.455 of 2008 dated 21.10.2011 on the file of the Motor Accident Claims Tribunal, (Principal



2. The respondents 1 & 2 herein who were the petitioners/claimants and the Insurance company/appellant herein who was the 2nd respondent and the 3rd respondent herein who is the owner of the vehicle, was the 1st respondent before the Tribunal.

On 28.10.2007 at about 8.30pm, when the deceased Kaliappan riding his motor cycle near M.G.R. Statue at Giddampatti Junction Road, on Krishnagiri Road, in Bargur, hit against a stationed lorry bearing Registration No.KA 21 7691 which was parked in the middle of the road without any indication of light or green leaves and thorns on the side of the Lorry showing indication of parking. The said lorry was parked for the purpose of repair works after removing parts of it. Due to sudden hit against the lorry, the deceased Kaliappan sustained grievous injuries on his head and admitted to the Hospital wherein he died despite treatment in the hospital. The Krishnagiri Town police have registered a case against the deceased in Cr. No.1454 of 2007 under Sections 279 and 337 and altered to Section 304(A) of I.P.C. In view of the death of Kaliappan, his sisters as legal heirs have filed a claim petition to the tune of Rs.5,00,000/- (Rupees Five Lakh Only) on the file of the Motor Accident Claims Tribunal (Principal District Judge) at Krishnagiri. After trial, the Claims Tribunal has awarded a sum of Rs.3,66,000/- (Rupees Three Lakh and Sixty Six Thousand Only) to the petitioners/1st and 2nd respondents herein, directing the Insurance company/appellant herein who is insurer of the lorry, to pay the compensation for the death of breadwinner of the family.

5.The learned counsel for the appellant would submit that the Tribunal has failed to note that the Lorry bearing Registration No.KA 21 7691 was parked on the extreme left side of the Road. Further, the lorry was parked on road side for the purpose of repair works after removing the parts of the lorry at the time of the accident. Hence, the said vehicle cannot be considered as a Vehicle under Motor Vehicle Act. Further, in the claim petition, the sisters of the deceased who are to be said as legal heirs have got married and living separately. Hence, they are not eligible for entitlement of the compensation claiming as Legal heirs of the deceased. It is to be noted that the aforesaid accident occurred due to the negligence driving of



the deceased only who hit behind the parked lorry which was stationed motionless on road side for repair works, not hit by the owner or driver of the Lorry. The FIR was also registered against the deceased only and not against the driver or owner of the Lorry. While so, the respondents are to be stated as the legal representatives of the deceased cannot seek any claim and relief under Section 163-A of the Motor Vehicle Act, since the deceased was registered as Tort-feasor vide F.I.R. In Cr. No.1454 of 2007 filed against the deceased. Hence, according to law, a Tort-Feasor or Representatives of the Tort-Feasor cannot invoke the provisions of Section 163-A when the deceased was of guilty of negligence and caused to the accident. Hence, the legal representatives of the deceased are not at all entitled for compensation and hence, their claim petition is liable to be set aside.

6. On the other hand, the learned counsel for the claimants/respondents 1 & 2 herein would submit that the Tribunal has rightly awarded after taking into consideration entire oral and documentary evidence placed before it. The deceased Kaliappan dashed against the lorry which was parked without any indication mark or any signal in the middle of the road failing to make understand other rider of the vehicles that the lorry has been parked for the purpose of repair work. Anyone rider of vehicle riding on main road, could not have assumed the reason of the parking the lorry in the middle of the road. The deceased did not observe the parked lorry in the middle of the road since no indication was shown in the Lorry or on the side of the lorry by the way of putting green leaves and thorns around the vehicle and no one was standing there to divert the vehicle speeding towards the road. Under this circumstances, when the deceased Kaliappan was riding his motor cycle towards his house, he did not observe the vehicle standing motionless on the road side since no one indication was shown on the side of the vehicle to make understand the condition of the vehicle and dashed on the rear side of the said vehicle. Due to the negligence on the part of owner of lorry for being parked it without any indication, deceased Mr.Kaliappan riding his motor cycle on the road, dashed on rear side of the lorry thereby he sustained grievous injuries on his head and was admitted to the Government Hospital and subsequently, he was referred to "Mohan Kumaramangalam Hospital, Salem for treatment. Despite treatment in the hospital, Mr. Kalliappan died on 08.11.2007 in view of the severe injuries sustained in the aforesaid accident. Hence, the legal heirs of the deceased who are dependants of the deceased, filed a claim petition for the death of their brother. The Tribunal has answered properly in the award relying on the various Judgments with regard to the questions raised by the Insurance Company on its liability on the ground that the deceased was only registered in Cr. No.1454 of 2007 for the



accident, not against the owner of the Lorry and the definition of the vehicle on the condition of removing parts of it and legal heirs of deceased those are sisters living separately. Hence, the legal heirs are entitled to get compensation from the Insurance Company. Moreover, the deceased Kaliappan was unmarried taking care of his both sisters in the family since they don't have parents at the time of the accident and both sisters were depending on the income of the deceased in which all concern there is no contra evidence by Insurance company to disprove the entitlement of the claimants. Hence, the appeal is liable to be set aside on the aforesaid ground and there is no need to interfere with the award passed by the Tribunal.

7. Heard, the learned counsel for both sides and perused the materials available on record.

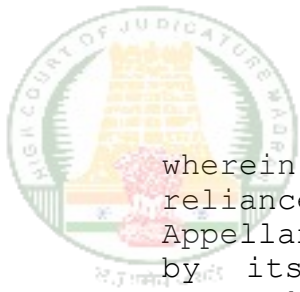
8. On the side of the petitioners, P.W.1 -the 1st petitioner was examined and Ex.A1 to Ex. A3 were marked. No evidence was let in and no exhibit was marked on the side of Insurance Company. The 3rd respondent was set exparte who is the owner of the lorry since he remained absent before this Court.

9. On perusal of the award, it is seen that the Tribunal has awarded the compensation to the petitioners after answering to all the contentions/questions raised by the learned counsel on behalf of the Insurance company by way of placing apt reliance on the various Judgments referred by the learned counsel for the petitioners/respondents 1 and 2 herein to support his arguments in favour of the petitioners/respondents 1 and 2 herein as per the details given below:

(i). Over the contention with regard to definition of Vehicle since the said lorry was parked after removing its parts for the purpose of repair works, hence, that cannot be considered as vehicle for which the Tribunal has referred to the Judgment passed by the Hon'ble High Court of Kerala in the case of "Motor and General Finance (India) Limited, Appellant Vs. Mary Mony and others, Respondents" reported in 1991 ACJ 101 - wherein it has been stated as under:

" Motor Vehicle Act, 1939, Section 110(1) - Words and Phrase - Use- The word Use has been used in a wider sense - It covers all engagement of the Motor vehicle, including driving, parking, keeping stationary, repairing, leaving unattended on the road and for any other purpose".

(ii). In the event of F.I.R. was lodged against the deceased as Tort-feasor, the Tort-feasor or legal heirs of the Tort-feasor cannot claim compensation against the Insurance Company



wherein the Tribunal has held at paragraph 12 as below, placing reliance on the judgments in the case (i) "Lakshmi and another, Appellants Vs. Metropolitan Transport Corporation Limited rep. by its Managing Director, Pallavan Salai, Chennai - 2, respondent, reported in 2011(1) TN MAC 410", (ii) Managing Director, Bangalore Metropolitan Transport Corporation, Appellants Vs. Sarojamma and another, Respondents, reported in 2009(2)TN MAC 118(SC), (iii) "The Oriental Insurance Co. Ltd. etc. -Appellant Vs. Hansrajbhai V. Kodala & Others- Respondents reported in 2001 SAR (Civil) 444 (SC), and (iv) "Usha Rathore and others, appellants Vs. National Insurance Co. Ltd. and others - Respondents reported in 2009 ACJ 214(Madya Pradesh).

"12. ... this petition is filed under Section 163-A, the claimants need not prove the accident and question of contributory negligence also does not arise. Once application is filed u/s.163A of M.V. Act, claimant not required to plead or establish negligence - Sections covers cases where even negligence is on part of victim. Even if victim contributed to accident, vehicle owner as well as Transport Corporation is liable for payment of compensation.

(iii). Further, with regard to the contention questioning the legal heirs of the deceased those are sisters, the Tribunal has referred to the Judgment passed by the Supreme Court in the case of "Gujarat State Road Transport Corporation Ltd. Ahmedabad, Petitioner Vs. Ramanbhal Prabhathbai and another - Respondents reported in 1987 ACJ 561 (Supreme Court of India) wherein it was observed as under:

"12. We feel that the view taken by the Gujarat High Court is in consonance with the principles of justice, equity and good conscience having regard to the conditions of the Indian society. Every legal representative who suffers on account of death of a person due to Motor Vehicle Accident should have a remedy for realisation of compensation and that is provided by Section 110-A to 110-F of the act. These provisions are in consonance with the principles the principles of law of torts that every injury must have a remedy. It is for the motor accidents claims tribunal to determine the compensation which appears to it to be just as provided in Section 110-B of the act and to specify the person or persons to whom compensation shall be paid. The determination of the compensation payable and its apportionment as required by Section 110-B of the act amongst the legal representatives for whose benefit, an application may



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be filed under Section 110-A of the Act, have to be done in accordance with well known principles of law. We should remember that in an Indian family brothers, sisters and brothers' children and some times foster children live together and they are dependent upon the breadwinner of the family and if the breadwinner is killed on account of a Motor Vehicle accident, there is no justification to deny them compensation relying upon the provisions of Fatal Accidents Act, 1855 which as we have already held has been substantially modified by the provisions contained in the act in relation to cases arising out of Motor Vehicle accidents. We express our approval of the decision in Megjibhai Khimji Vira Vs. Chatubhai Taljabhai (1977 A.C.J. 253 (Gujarat)); and hold that the brother of a person who dies in a Motor Vehicle Accident is entitled to maintain a petition under Section 110-A of the Act if he is a legal representatives of the deceased.

It is clear that their Lordships have held that even brother of a deceased is entitled to maintain a petition under Section 10-A of the Motor Vehicle Act, 1939, if he is a legal representative of the deceased. In the same manner, the claimants are sisters of the deceased who were depending on the income of the deceased. Hence, the Tribunal has not denied the claim raised by the sisters on account of death of their brother who was bachelor and breadwinner of the family taking care of his both sisters relying on the provisions of Fatal Accidents Act.

10. In the light of the aforesaid observation and discussion, this Court is of the considered view that the Tribunal has passed an award in accordance with law having considered oral and documentary evidence along with decisions rendered by Hon'ble Supreme Court as well as other courts let in by both parties. Hence, this Court is not inclined to interfere with the award passed by the Tribunal. Therefore, the appellant is hereby directed to deposit the entire award amount along with interest @ 6% p.a. from the date of claim petition till the date of realisation, to the credit of M.C.O.P.No.455 of 2008 on the file of the Motor Accident Claims Tribunal, (Principal District Judge), at Krishnagiri, after deducting the amount already deposited if any, within a period of three weeks from the date of receipt of copy of this Judgment. The respondents 1 and 2 are permitted to withdraw their respective share amount as awarded by the Tribunal after filing a formal petition before the Tribunal.



11. In the result, the Civil Miscellaneous petition is dismissed. Accordingly, the award in M.C.O.P. No.455 of 2008 passed by the Tribunal is confirmed. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

Lbm

To

1. The Motor Accident Claims Tribunal
(Principal District Judge), at Krishnagiri.
2. The Section Officer,
V.R.Section, High Court,
Madras.

+1cc to Ms.R.Sreevidhya, Advocate, S.R.No.11297.
+1cc to Mr.Mukund R.Pandian, Advocate, S.R.No.11497.

C.M.A.No.3696 of 2013

CP(CO)
CSR: 22.04.2021