

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08-09-2020

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

C.M.A. No.2735 of 2019

M.Govindan

.. Appellant/Respondent

vs.

1.Karpagam

2.Umasankar

3.D.Vimala

4.D.Malathi .. Respondents/Petitioners

The Civil Miscellaneous Appeal is preferred under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 21.12.2018 passed in M.C.O.P. No.262 of 2011 on the file of the learned Sub Judge, Sub Court-cum-Motor Accidents Claims Tribunal, Vaniyambadi.

For Appellant : Ms.Revathy for Mr.R.Nalliyappan

For Respondents : Mr.M.Sivakumar

J U D G M E N T

The judgment and decree dated 21.12.2018 passed in M.C.O.P. No.262 of 2011 by the learned Sub Judge, Sub Court-cum-Motor Accidents Claims Tribunal, Vaniyambadi, is under challenge in the present Civil Miscellaneous Appeal.

2. The accident occurred on 05.07.2010 at about 05.00 A.M., at Ambur Bye-pass Road, SBI ATM Centre. The Ambur Police Station registered a case in Crime No.589 of 2010 under Section 304 (A) of IPC.

3. The Tribunal considered the issues with reference to the documents and the evidences. The findings of the Tribunal reveal that the two wheeler bearing Registration No.TN-23-AU-1258 was driven by the appellant in a rash and negligent manner

towards Ambur from Devalapuram dashed against the deceased Dhandapani, who was walking on the extreme left side of the road in the same direction. Due to that impact, the said Mr.Dhandapani died on the spot. The deceased was taken to the Government Hospital at Ambur for postmortem and a case was also registered under Section 304(A) of IPC.

4. The claim petition was filed by wife, two sons and a daughter of the deceased person. The Tribunal considered the nature of the accident with reference to the evidences produced.

5. The appellant filed counter before the Tribunal by stating that the accident was not occurred on account of the rider of the two wheeler and it happened due to one unidentified car, which was coming from Ambur towards Devalapuram and at that point of time, the deceased suddenly crossed the road and dashed against the appellant's vehicle. The appellant also fell down and sustained injuries. The first claimant was examined as PW-1 and the FIR copy was marked as Ex.P-1. Ex.P-1 FIR reveals that the accident occurred due to rash and negligent driving of the appellant. A case in Crime No.589 of 2010 was registered against the appellant.

6. The Tribunal made a finding that the counter filed by the appellant wherein it is stated that the deceased suddenly crossed the road and caused the accident by himself. However, the appellant has not taken any steps to disprove the document Ex.P-1 by examining the Watchman admittedly on duty at the SBI ATM Centre at Ambur.

7. The Tribunal arrived a conclusion that except by filing counter, the appellant has not established or proved that the accident occurred due to an unidentified vehicle.

8. This being the factum established, the Tribunal arrived a conclusion that the accident occurred only due to the rash and negligent driving of the appellant and therefore, the appellant, being the owner and rider of the two wheeler bearing Registration No.TN-23-AU-1258 is liable to pay compensation to the claimants.

9. As far as the quantum of compensation is concerned, the deceased was aged about 50 years at the time of accident. He was a PATC Bus Conductor and was earning a monthly income of Rs.14,000/-. The claimants had filed Ex.P-2 and Ex.P-7 to establish the age of the deceased. The monthly salary of Rs.14,000/- per month was also admitted. Thus, by deducting one-fourth ( $1/4^{\text{th}}$ ) of his income and for personal expenses, the Tribunal calculated the compensation. The total compensation of Rs.15,11,000/- is awarded.

10. The learned counsel appearing on behalf of the appellant strenuously contended that the Tribunal has wrongly arrived a conclusion that the accident occurred due to rash and negligent driving of the appellant. In fact, the deceased was hit by an unidentified vehicle and the Tribunal has not considered the same.

11. Perusal of the evidence, this Court is of the considered opinion that the appellant has stated that the death occurred due to dashing of an unidentified vehicle and the same is not established nor proved before the Tribunal through an acceptable evidence. A mere statement in the counter is insufficient and such a statement, which is vital, is to be established during the trial. In the absence of any proof to establish that the death of Mr.Dhandapani occurred due to rash and negligent driving of the driver of an unidentified vehicle, the Tribunal would be right in arriving a conclusion that the appellant alone is responsible and liable to pay compensation to the victims.

12. This being the categorical findings of the Tribunal, this Court do not find any perversity or error, so as to interfere with the award passed by the Tribunal. Accordingly, the grounds raised in the present Civil Miscellaneous Appeal deserve no merit consideration.

13. The appellant is directed to deposit the entire award amount with accrued interest, within a period of twelve weeks from the date of receipt of a copy of this judgment and on such deposit being made, the respondents/claimants are permitted to withdraw their respective portion of compensation as apportioned by the Tribunal in its award by filing an appropriate application before the Tribunal and payments are to be made through RTGS.

14. Accordingly, the judgment and decree dated 21.12.2018 passed in M.C.O.P. No.262 of 2011 by the learned Sub Judge, Sub Court-cum-Motor Accidents Claims Tribunal, Vaniyambadi stands confirmed and consequently, CMA No.2735 of 2019 is dismissed. However, there shall be no order as to costs.

Sd/-  
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

Svn

To

The Sub Judge,  
Sub Court-cum-Motor Accidents Claims Tribunal,  
Vaniyambadi.

Copy to: The Section Officer,  
V.R. Section,  
High Court, Madras.(2)

+1cc to C.Prakasam, Advocate, SR.No.29472.

CMA No.2735 of 2019

BR(CO)  
CSR 27.04.2021



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