

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.02.2020

CORAM:

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.1782 of 2014
and CMA.SR.No.50217 of 2014
and MP.No.1 of 2014
and MP.SR.No.50220 of 2014

CMA.1782 of 2014
Vedham

... Appellant

Vs.

1.C.Nallathambi
2.Reliance General Insurance Co Ltd.,
No.23, 3rd Floor, Unit -1,
Spur Tank Road,
Chetpet, Chennai-600 031.

3.Saroja
4.Amudha

... Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree made in MCOP.No.1340 of 2010 dated 27.02.2014 on the file of the Motor Accident Claims Tribunal, IV Court of Small Causes, Chennai.

For Appellant : M/s.Subathra
for M/s.M.Malar.

For Respondents : Mr.S.Arunkumar for R2.
R1 - Not ready notice.
R3 and R4 - Served. Name printed.

CMA.Sr.No.50217 of 2014

Vedham

.. appellants

-Vs-

1.Saroja
2.G.Amudha
3.C.Nallathambi
4. The Manager,
Reliance General Insurance Co Ltd.,
Balmer Lawrie house,
No.628, Anna Salai, Teynampet,
Chennai - 18.

.. respondents.

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree made in MACTOP.No.52 of 2011 dated 21.09.2012 on the file of the Motor Accident Claims Tribunal, Principal Sub Judge, Chengalpattu.

For Appellant : M/s.M.Malar.

COMMON JUDGMENT

The appellant is the claimant filed this appeal, against the judgment and decree made in MCOP.No.1340 of 2010 dated 27.02.2014 on the file of the Motor Accident Claims Tribunal, IV Court of Small Causes, Chennai.

2. The case of the claimant/appellant is that on 15.10.2009 at about 20.15hrs, the deceased Gopal was riding two wheeler at GST Vandalur Gate at that time a lorry bearing Reg.No.TN21-K-6518 driven by its driver in a rash and negligent manner from Chengalpat to Tambaram direction dashed against the deceased, due to the accident the driver of the motorcycle died instantaneously. The first respondent being the owner of the lorry and the second respondent is the insurer of the lorry are liable to pay the compensation.

3. The second respondent/insurance company filed counter stating that the claimant is the second wife of the deceased Gopal, the legal heirs of the deceased Gopal, i.e., Wife/Saroja and Daughter/Amudha filed claim petition in MACT.No.36 of 2008 before the MACT, Chengalpattu and the award was also came to be passed on 02.09.2012. Therefore, the claim petition filed by the claimant herein is not maintainable.

4. In order to prove the case of the claimants, the claimants have examined PW1 to PW3 and marked Ex.P1 to Ex.7. On the side of the respondent RW1 was examined and Ex.R1/Certified copy of the decree in MCOP.No.52 of 2011 is marked.

5. Heard both sides and perused the materials available on record.

6. Challenging the judgment and decree made in MCOP.No.1340 of 2010 dated 27.02.2014 on the file of the MACT, IV Court of Small Causes, Chennai, the appellant is before this Court. The appellant has filed this claim petition in the capacity of dependant/second wife of the deceased. The second respondent is the legally wedded wife of the deceased and the third respondent is their daughter and they are the legal heirs of the deceased Gopal. The appellant examined herself as PW1 stating that she

is living with the deceased for the past 18years and to prove the claim she marked Ex.P4/family card and Ex.P5/Voter identity card of the deceased. In order to support her claim she also examined PW2 and PW3.

7. Before the Tribunal, the second respondent through RW1 marked Ex.R1/certified copy of the decree made in MCOP.No.52 of 2011, wherein it is seen that already award was passed for the same issue, the Tribunal has taken a stand that the Tribunal cannot once again adjudicate the issue on hand. The claimant is well aware of the fact and filed an impleading petition before the Sub Court, Chengalpattu to implead herself in the claim petition filed by the legal heirs of the deceased Gopal, was dismissed, hence, the Tribunal rejected the claim of the claimant to workout her remedy before the appropriate forum and simultaneous relief cannot be granted for the same accident.

8. On a perusal of records it is seen that the appellant has filed the MACTOP.No.1348 of 2010 by suppressing the fact that the legal heirs of the deceased Gopal i.e, Saroja/Wife and Amudha/Daughter have filed the claim petition in OP.No.36 of 2008, the same was decided on 02.09.2012 itself. The appellant has approached this Court with unclean hands. Except stating that she lived with the deceased for 18years, she was not in a position to prove the same by producing the legal heir certificate in her favour. Failure on the part of the appellant to challenge the order made in OP.No.36 of 2008 shows that she has no valid document to challenge the same. The Tribunal has rightly decided to direct the claimant can work out her remedy in the appropriate forum and no simultaneous relief can be granted for the same accident. Hence, this Court is not inclined to interfere with the findings of the Tribunal.

9. The claim petition filed by the Saroja/wife and Amudha/Daughter of the deceased before the Sub Court, Chengalpattu in MACTOP.No.52 of 2011 was decided on 21.09.2012 by awarding a sum of Rs.3,48,956/- towards compensation. Challenging the said judgment and decree the second wife/Vedham has filed an appeal before this Court in CMA.Sr.No.50217 of 2014 seeking for enhancement and apportionment of the compensation made in MACTOP.No.52 of 2011 dated 21.09.2012 along with petitions to grant leave and to dispense with the production of judgment and decree. The above appeal is still pending in SR stage itself. This Court is of the view that the appellant is not the legally wedded wife of the deceased Gopal, she has not produced any legal heir certificate to prove her claim, in the absence of any such legal heir certificate, this Court cannot entertain the appeal filed by her for enhancement of compensation and for apportionment thereon. The appellant has no locus standi to file this appeal in the capacity of

appellant, as she is not party to the proceedings before the Tribunal. The petition filed by her for impleading herself in the claim petition before the Tribunal has been dismissed, the appellant herein has not challenged the order of dismissal before the appropriate forum, and the same has attained its finality. Hence, this Court is inclined to dismiss the appeal filed by the appellant in SR stage itself.

10. In the result, the CMA.No.1782 of 2014 stand dismissed and the CMA.Sr.No.50217 of 2014 is also dismissed at SR stage itself. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

1. The IV Judge, Motor Accident Claims Tribunal,
Court of Small Causes, Chennai.
2. The Principal Sub Judge,
Motor Accident Claims Tribunal,
Chengalpattu.

1 cc to Mr.S. Arunkumar, Advocate, Sr. 8681

1 cc to M/s.M. Malar, Advocate, Sr. 8849

C.M.A.No.1782 of 2014
and CMA.Sr.No.50217 of 2014

PP (CO)
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