

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.01.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.491 of 2017

Kaliappan (Died)

1.P.Murugesh

2.M.Velathal

...Appellants/Petitioners

Vs.

1.Hameed Khan

...Respondent 1/Respondent 1

2.National Insurance Company Ltd.,
Cuddalore.

...Respondent 2/Respondent 2

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 03.12.2008 made in M.C.O.P.No.133 of 2005 on the file of Motor Accident Claims Tribunal, Sub Court, Udumalpet.

For Appellants : Mr.N.Umapathi

For R2 : Mr.J.Chandran

R1 : Left

JUDGMENT

The Civil Miscellaneous Appeal is filed for enhancement of compensation granted by the Tribunal in the award dated 03.12.2008 made in M.C.O.P.No.133 of 2005 on the file of Motor Accident Claims Tribunal, Sub Court, Udumalpet.

2.The appellants are claimants in M.C.O.P.No.133 of 2005 on the file of Motor Accident Claims Tribunal, Sub Court, Udumalpet. Initially one Kaliappan filed the said claim petition, claiming a sum of Rs.10,00,000/- as compensation for the injuries sustained by him in the accident that took place on 28.11.2004. Pending claim petition, the said Kaliappan died and his legal heirs/appellants were impleaded as appellants/claimants.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the deceased has travelled as co-driver in the lorry and the 2nd respondent is liable to pay compensation only to the driver and the insurance does not cover co-driver. The Tribunal dismissed the claim petition against the 2nd respondent and directed the 1st respondent to pay a sum of Rs.6,82,000/- as compensation to the appellants.

4. Challenging the portion of the award dismissing the claim petition as against the 2nd respondent and not being satisfied with the quantum of compensation amount awarded by the Tribunal, the appellants have come out with the present appeal seeking enhancement of compensation.

5.The learned counsel appearing for the appellants/claimants contended that the 2nd respondent failed to prove that the deceased travelled in the mini lorry as co-driver or gratuitous passenger. On the other hand, the appellants have proved that the deceased travelled as driver and when he got tired, he has permitted another person to drive the vehicle. The Tribunal failed to see purpose of the visit of the deceased is to help his friend to purchase a mini lorry and after purchase he travelled in the mini lorry as a driver. The Tribunal ought to have ordered pay and recovery. The deceased was a driver at the time of accident and was earning more than Rs.6,000/- per month. The Tribunal fixed a meagre sum of Rs.4,500/- per month as income of the deceased. The deceased was aged 23 years at the time of accident and the Tribunal has not awarded any enhancement towards future prospects. The amounts awarded under different heads are also meagre and prayed for allowing the appeal.

6.Per contra, the learned counsel appearing for the 2nd respondent/Insurance Company contended that the deceased travelled in the mini lorry which is a goods vehicle as unauthorised passenger. He was travelling only as gratuitous passenger. The Tribunal considering the materials on record has rightly dismissed the claim petition as against the 2nd respondent. The reason given by the Tribunal for dismissing the claim petition against the 2nd respondent is valid and prayed for dismissal of the appeal.

7.Heard the learned counsel appearing for the appellants as well as the learned counsel appearing for the 2nd respondent/Insurance Company and perused all the materials available on record.

8.From the materials available on record, it is seen that the Tribunal has not framed any issues with regard to negligence. There is no finding as to whether the accident had

occurred due to rash and negligent driving by the driver of the mini lorry. Further, it is the case of the appellants that the deceased accompanied his friend to purchase the mini lorry and after purchase he was driving the mini lorry. It is the further case of the appellants that after driving some distance the deceased permitted the another person to drive the mini lorry and was taking rest on the back side of the mini lorry. It is the case of the 2nd respondent that the deceased travelled in the goods vehicle as gratuitous passenger. Neither the appellant nor the 2nd respondent took a stand that the deceased travelled as co-driver. The Tribunal contrary to the pleadings and the evidence let in by the parties, has given a finding that the deceased travelled as a co-driver and policy issued by the 2nd respondent/Insurance Company did not cover the liability for the co-driver. The findings of the Tribunal are erroneous and without proper consideration of the materials available on record. In view of the same, the award of the Tribunal is set aside and the matter is remanded to the Tribunal for fresh consideration.

9.The Tribunal is directed to frame necessary issues with regard to negligence and whether the deceased had travelled as gratuitous passenger or as a co-driver as claimed by the 2nd respondent and decide MCOP on merits and in accordance with law. Since the MCOP is of the year 2005, the Tribunal is directed to dispose of the matter within a period of three months from the date of receipt of case records from this Court.

10.With the above direction, Civil Miscellaneous Appeal is disposed of. No costs.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

mtl

To

1.The Subordinate Judge,
The Motor Accident Claims Tribunal
Udumalpet.

2.The Section Officer
V.R.Section
High Court, Chennai.

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+1cc to M/S.N.Umapathi, Advocate, S.R.No.4656
+1cc to Mr.J.Chandran, Advocate, S.R.No.4806

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RV (CO)
KKV/29/07/2020



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