

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.09.2020

CORAM:

THE HONOURABLE Mr. JUSTICE R.MAHADEVAN

C.M.A.No.839 of 2017

1.Palaniammal

2.Minor.Yogeswaran

3.Minor.Ilavazhagan
(Minors 2 and 3 represented by
mother and next friend Palaniammal)

4.Kuppayi

... Appellants

Vs.

1.Sakunthala

2.The New India Assurance Company Limited,
Divisional Office,
Premier Complex, 5 Road, Salem

... Respondents

Appeal under Section 173 of the Motor Vehicles Act against the judgment and decree dated 30.10.2006 made in MCOP No.825 of 2005, on the file of the Motor Accidents Claims Tribunal, I Additional District Court, Salem.

For Appellants : Mr.K.Kuppusamy

For R2 : Mr.M.Krishnamoorthy

R1 : Exparte

JUDGMENT

The Civil Miscellaneous Appeal is filed challenging the order of dismissal dated 30.10.2006 made in MCOP No.825 of 2005, on the file of the Motor Accidents Claims Tribunal, I Additional District Court, Salem.

2.The brief facts of the case are as follows:

On 09.10.2004, at about 11.00 a.m., when the deceased Annamalai was riding the motorcycle bearing Registration No.TN 28 F 5109 near Kelappatti, the 407 Tempo, bearing Registration No.TN 28 F 7773, belonging to the 1st respondent and insured with the 2nd respondent/Insurance Company, came from the opposite direction in a rash and negligent manner and hit against the motorcycle. Due to the said impact, the deceased Annamalai sustained grievous injuries all over the body. Immediately he was admitted in the Salem Government Hospital but he succumbed to the injuries in the hospital. Stating

that the accident had occurred only due to the carelessness and negligence on the part of the driver of the tempo, the wife, sons and mother of the deceased filed a claim petition seeking compensation of Rs.10,00,000/-. The Tribunal dismissed the claim petition as against the appellants. Challenging the order of dismissal, the appellants have come out with the present appeal.

3.The learned counsel for the appellants has submitted that the Tribunal has erred in dismissing the claim petition due to lack of territorial jurisdiction. The Tribunal ought to have directed the appellants to represent the petition before proper forum and ought not to have dismissed the same. It is further contended that the Tribunal has erred in holding that the 2nd respondent/Insurance Company is not liable to pay compensation and that the 1st respondent alone is liable to pay compensation. The Tribunal ought to have considered the fact that the appellants are third parties to the offending vehicle and hence, the Insurance Company should pay compensation to the claimants and thereafter recover the same from the owner of the vehicle. Thus, the learned counsel prayed for allowing this appeal and for granting appropriate compensation.

4.Per contra, the learned counsel appearing for the 2nd respondent/ Insurance Company contended that the Tribunal, after considering the materials available on record, held that since the accident had occurred in Namakkal, the appellants cannot maintain a claim petition before MACT, I Additional District Court, Salem. In such circumstances, the Tribunal has rightly dismissed the claim petition, which warrants no interference at the hands of this Court.

5.Heard both sides and perused the records.

6.It is seen that the deceased was a resident of Namakkal and the accident had occurred in Namakkal and hence, the Tribunal has held that the appellants / claimants cannot maintain claim petition before the Tribunal at Salem. However, the Tribunal has adjudicated the issue and has given a finding that the tempo van driver was responsible for the accident. The Tribunal has given further finding that since the driver of the van had violated the policy condition, the owner of the vehicle has to pay compensation to the claimants and the Insurance Company was not liable to pay compensation

and ultimately, the compensation was quantified at Rs.4,13,200/-. Having adjudicated the issue to that extent, the Tribunal has finally dismissed the claim petition on the ground of lack of jurisdiction.

7.This Court is of the view that when the petition filed by the appellants lacks jurisdiction, the Tribunal ought to have directed them to represent the same before the proper forum. Without doing so, the Tribunal has analysed all the factual aspects and arrived at the findings with respect to negligence, liability and quantum and ultimately dismissed the claim petition. Such course adopted by the Tribunal cannot be countenanced by this Court. Hence, the order passed by the Tribunal is set aside and the appellants are granted liberty to file a claim petition before the proper forum at Namakkal District. On filing of such petition, the Tribunal concerned shall entertain the same without raising any ground as regards the limitation and decide the issue independently, without being influenced by any of the observations made by the Motor Accidents Claims Tribunal, I Additional District Court, Salem.

8.The Civil Miscellaneous Appeal is disposed of accordingly. No costs.

03.09.2020

Index : Yes / No
Speaking Order: Yes/No
mtl

To

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

2.The Section Officer,
VR Section,
High Court,
Madras.



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R.MAHADEVAN, J.

mtl



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