IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 24.03.2021

PRONOUNCED ON :21.04.2021

CORAM

THE HONOURABLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

C.M.A.NO.3159 OF 2004
AND
C.M.P.NO.1632 OF 2005

1. Vaiyapuri
S/o.Vaithialingam
2. Visalashi
W/o.Vayyapuri
3. Minor Vikkramathithan
4. Minor Amarakavi
(Minor appellants 3 & 4 are represented by next friend/guardian Vaiyapuri/1st appellant herein) ..Appellants

Vs.

1. R.Prabaharan

2. The United India Insurance Company,
No.16, Kadarnavas khan Road,
Nungambakkam, Chennai-6.
(Notice against R1 is dispensed with as he was set ex-parte before the Tribunal) ..Respondents

Prayer:

This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 22.04.2004 in M.C.O.P.No.81 of 1993 on the file of the Motor Accident Claims Tribunal, Principal Sub-Judge, Cuddalore.

For Appellants :: Mr.R.Muralidharan

For R2 :: Mr.S.Arunkumar

JUDGMENT
(heard through video-conferencing)

This Civil Miscellaneous Appeal has been filed against the Judgment and Decree dated 22.04.2004 in M.C.O.P.No.81 of 1993 on the file of the Motor Accident Claims Tribunal, Principal Sub-Judge, Cuddalore.

2.The appellants are the claimants in M.C.O.P.No.81 of 1993 on the file of the Motor Accident Claims Tribunal, Principal Sub-Judge, Cuddalore. The claimants have filed the said claim petition, claiming a sum of Rs.4,00,000/- as compensation for the death of one Muthu in a motor accident that took place on 07.07.1992.

3.The Tribunal, on a consideration of the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent riding by the rider of the motorcycle and directed the 2nd respondent/Insurance Company to pay a sum of Rs.25,000/- as compensation to the appellants/claimants.

4.Challenging the quantum of compensation awarded by the Tribunal vide award dated 22.04.2004 in M.C.O.P.No.81 of 1993 granting compensation to the appellants, the appellants/claimants have come forward with the present appeal.

5.On perusal of the causelist, it is found that the 1st appellant died, memo filed on 04.04.2016.

6.At the time of arguments, the learned counsel for the appellants Mr.R.Muralidharan, submitted that the accident took place in the year 1992, claim petition filed in the year 1993. The claim petition was partly allowed granting the award of Rs.25,000/-, therefore, the claimant had filed this appeal seeking enhancement of the compensation.

7.At the time of enquiry before the Motor Accident Claims Tribunal, Principal Sub-Judge, Cuddalore, the injured/claimant could not furnish the statement of insurance particulars. Therefore, the Motor Accident Claims Tribunal, Principal Sub-Judge, Cuddalore had partly allowed the claim petition under the head 'no fault basis'. Now, the learned counsel for the appellants, as claimants had procured the insurance particulars from the connected case filed before the Court of the learned Judicial Magistrate, wherein the Motor Vehicles Inspectors Report was marked. Therefore, the learned counsel for the appellant obtained certified copies of the Motor Vehicles Report wherein the registration number of the two wheeler as mentioned along with the details of insurance policy since the appellant placed arguments based on the Motor Vehicle Inspectors Report.

8.The learned counsel for the 2nd respondent/Insurance Company sought time to verify the records in the office of the Insurance Company regarding the details mentioned in the Motor Vehicle Report regarding the insurance.

9.On request of the learned counsel for the respondent/Insurance Company sufficient time was granted. Today when the matter was posted for hearing, the learned counsel for the 2nd respondent submitted his arguments. It is his contention that in the year 1993, the acident took place. The claimants herein as appellants had obtained certified copies of the Motor Vehicles Report as proof of insurance that will not help the appellant or the Tribunal or the Appellate Court regarding fastening the liability on the Insurance Company since only the insurance details are made available and further details regarding whether it is a act policy or otherwise composite policy and its conditions, etc., are not available. Therefore, merely furnishing the insurance details as found in the Motor Vehicle report will not help the case of the appellant or the Court. The Insurance Company had obtained the copy of the F.I.R. It is to be noted that in the claim petition for reasons best known to the claimant, F.I.R was not at all mentioned. Now, on getting a copy of the FIR, the Insurance Company came to know that the claimant himself was the cause of the accident. In such cases, the person who caused the accident, cannot claim damages. Therefore, when the claimant himself tort-feaser, nothing survives in this appeal.

10.Mr.S.Arunkumar, learned counsel for the 2nd respondent/Insurance Company relied on the Hon'ble Supreme Court of India in Ramkhiladi and another Vs. United India Insurance Co.Ltd., and another reported in 2020 (1) TN MAC 1 (SC.

> MOTOR VEHICLES ACT, 1988 (59 of 1988), Section 163-A – Maintainability of claim under – Deceased driving Motorcycle borrowed from its Owner – Acident due to negligent driving of another vehicle as admitted by Claimants – Claim Petition filed against Owner of borrowed vehicle and not against Driver/Owner of offending vehicle – Deceased, while driving borrowed vehicle, steps into shoes of himself is involved – Law laid down in Ningamma applied – When deceased stepped into shoes of Owner of borrowed vehicle, Claim Petition against Owner and Insurer of borrowed vehicle not maintainable – Claimants ought to have filed Claim Petition against Owner and Insurer of offending vehicle as Third party to offending vehicle – Deceased

> has to be a Third party as liability of Insurer would be qua Third party only - In instant case, deceased cannot be said to be a Third party in respect of borrowed vehicle - However, as per Contract of Insurance in case of personal acident, Owner/Driver entitled to sum of Rs.1 lakh - Deceased, being in shoes of Owner of borrowed vehicle, entitled to sum of Rs.1 lakh as per Contract of Insurance - Insurer, therefore, not liable to pay Compensation as awarded by Tribunal, but liable to pay Rs.1 lakh as per Contract of Insurance.

11.Further, the learned counsel for the 2nd respondent furnished the copy of the FIR which was not at all marked before the Tribunal as additional typed-set. The additional typed-set cannot be considered by the Court as the same had not been marked. At the same time, the Court can draw adverse inference against the claimant for not filing FIR which is a mandatory document for filing claim cases. Therefore, the arguments of the learned counsel for the 2nd respondent/Insurance Company that the claimant himself is the tort-feaser. Therefore, the claim petition is not maintainable is accepted by this Court. The arguments of the learned counsel for the appellant cannot be accepted by this Court as by now, the legal heirs of the original claimant has been impleaded as appellants 1 to 4.

12.In the cases of injury, compensation is granted to the person who had suffered injury for the pain and sufferings and not to his legal heirs. In the course of the pendency of the claim petition or the appeal, if the victim of the accident/ the injured/victim dies, then the legal heirs can only claim medical expenses and no other relief. Here, the original claim petition was partly allowed by the Tribunal against which the original claimant had filed Civil Miscellaneous Appeal now the case could not be proceded as he had died. Under those circumstances, the appeal is not maintainable. The arguments of the learned counsel for the appellants are also rejected.

13.Heard the learned counsel appearing for the appellants/claimants as well as the learned Counsel appearing for the 2nd respondent/claimant and perused the materials available on record.

Point for consideration:

Whether the claimants are entitled to compensation?

14.On perusal of the records in C.M.A.No.3159 of 2004, it is found that the appellants herein had not filed a copy of the FIR in the claim petition in M.C.O.P.No.81 of 1993 on the file of the Motor Accident Claims Tribunal, Principal Sub-Judge, Cuddalore.

15.As pointed out by the learned counsel for the 2nd respondent / Insurance Company for the reasons best known to the claimants, the FIR was not marked. On perusal of M.C.O.P.No.81 of 1993, it is found that the Tribunal disbelieved the evidence of P.Ws.1 and 2. Therefore, the claim petition was partly allowed. He had observed that the important documents regarding the insurance, driving licence had not been marked.

16.The learned counsel for the appellants had submitted that P.W.2 had narrated the accident, the 2nd respondent/Insurance Company had not let in any evidence. If there is no contra evidence, then the Insurance Company or the Tribunal or the Appellate Court had to be believed the evidence of P.W.2 when the Insurance Company had not let in contra evidence, then the evidence of P.W.2 stands and is to be accepted. Therefore, based on P.W.2, the Court can arrive at conclusion and grant compensation.

17.On perusal of the Civil Miscellaneous Appeal, it is found that the appellant died during pendency of the appeal and the legal heirs were impleaded as parties and persuade the case.

18.If the appellant/claimant died after compensation was granted to the appellant, and if the appellant died during the pendency of the appeal, the appeal itself had to be dismissed. Here, the appellant died and he was shown as 1st appellant and his children who were impleaded as appellants 3 and 4 and the Tribunal had not accepted the contention of the claimants, however, partly allowed the claim petition. But when the claimant as appellant died during the pendency of the appeal before this Court, then his legal heirs cannot seek any relief. Usually in injured cases, the pain and sufferings experienced by the injured claimant alone would be considered for granting the award. Towards the expenses regarding purchase of medicines alone, the legal heirs of the deceased claimant/appellant are entitled to. Here in this case the award as claimed by the claimant, had not been passed by the Tribunal. Therefore, on the date of death of the sole claimant, cause of action does not extend to the legal heirs of the deceased/grievously injured person. In the absence of any award passed or partial award passed this appeal had no merits and the appeal is liable to be dismissed.

19.In the result, the Appeal stands dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

gbi

To

1. The Principal Sub-Judge,
   Motor Accident Claims Tribunal,
   Cuddalore.

2. The Section Officer,
   V.R.Section, High Court of Madras.

+1cc to Mr.R.Muralidharan, Advocate, S.R.No.24731
+2ccs to Mr.S.Arunkumar, Advocate, S.R.No.24409,23409

C.M.A.No.3159 of 2004

SPD(CO)
PM/22/10/2021