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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.03.2021

CORAM :

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.499 of 2021

Koveswari

...Appellant / Petitioner

Vs.

1.T.Vedachalam

2.M/s.National Insurance Co. Ltd.,
Thanthai Periyar Complex,
Near Old Bus Stand,
Salem 636 001.

...Respondents / Respondents

Prayer : This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the order and decree dated 05.03.2020, made in M.C.O.P. No.1817 of 2016, on the file of the Special District Judge, Motor Accident Claims Tribunal, Salem.

For Appellant : Mr.SP.Yuvaraj

For Respondents : Mr.S.Arunkumar (For R2)

J U D G M E N T

(The matter is heard through Video Conferencing/Hybrid mode)

This appeal has been filed against the order of dismissal dated 05.03.2020, made in M.C.O.P. No.1817 of 2016, on the file of the Motor Accident Claims Tribunal, Salem.

2.By consent of the learned counsel appearing for the appellant as well as the 2nd respondent, the appeal is taken up for final disposal at the admission stage itself.

3.The appellant filed M.C.O.P. No.1817 of 2016, on the file of the Motor Accident Claims Tribunal, Salem, claiming a sum of Rs.15,00,000/- as compensation for the death of one Karthick who died in the accident that took place on 08.01.2012.



4. According to the appellant, on the date of accident, when the deceased Karthick was riding a Motorcycle bearing Registration No. TN-30-Y-8094 along with one Nallathambi as pillion rider on Mallikundam to Mecheri main road, near Mallikundam diversion road, the driver of a Maruti Omni Van bearing Registration No. TN-30-AC-9459 belonging to the 1st respondent, drove the same in a rash and negligent manner, talking over cell phone, hit against the deceased and caused the accident. In the accident, the deceased Karthick sustained fatal injuries. The accident occurred only due to rash and negligent driving by the driver of the Omni Van belonging to the 1st respondent. Hence, the appellant filed the claim petition, claiming compensation against the respondents as owner and insurer of the offending vehicle respectively.

5. The 1st respondent, owner of the Car, filed counter statement and denied all the averments made by the appellant. According to the 1st respondent, the Motorcycle was driven by the deceased Karthick, who was a minor aged 17 years, in a rash and negligent manner and while he joined the main highway from a branch road, without ascertaining the vehicular traffic on the highway, dashed against the left side front door of the Maruti Omni Van and invited the accident. The Police has registered a case against the deceased who is a tort-feasor. Further, the deceased Karthick, rider of the Motorcycle did not possess valid and effective driving license at the time of accident. The 1st respondent also denied the age, avocation and income of the deceased Karthick and prayed for dismissal of the claim petition.

6. The 2nd respondent-Insurance Company filed counter statement and denied all the averments made by the appellant. According to the 2nd respondent, the deceased Karthick was riding the Motorcycle in a rash and negligent manner and hit against the left side door of the Omni Van bearing Registration No. TN-AC-9459 and caused the accident. FIR was registered against the deceased Karthick by the Mecheri Police. The criminal case in Cr.No.12/2012 filed against the deceased Karthick was closed as abated and closure report was already filed before the Judicial Magistrate Court No.2, Mettur. The accident occurred only due to rash and negligent riding of Motorcycle by the deceased Karthick and he is the tort-feasor. At the time of accident, the deceased Karthick did not possess valid driving license to ply the Motorcycle. Hence, the 2nd respondent is not liable to pay any compensation to the appellant. In any event, the appellant has to prove the age, avocation and income of the deceased. The total compensation claimed by the appellant is excessive and prayed for dismissal of the claim petition.



7. Before the Tribunal, the appellant examined herself as P.W.1, examined one Sekar, Police official attached to the Mecheri Police Station as P.W.2 and marked 13 documents as Exs.P1 to P13. The respondents examined one Annamalai as R.W.1 and marked 2 documents as Exs.R1 & R2. Three documents were marked as Exs.C1 to C3.

8. The Tribunal considering the pleadings, oral and documentary evidence, dismissed the claim petition, holding that the claim petition filed under Section 166 of the Motor Vehicles Act is not maintainable.

9. To set aside the order of dismissal dated 05.03.2020, made in M.C.O.P. No.1817 of 2016, the appellant has come out with the present appeal.

10. The learned counsel appearing for the appellant contended that the accident occurred only due to rash and negligent driving by driver of the Omni Van belonging to the 1st respondent. The Tribunal erroneously fixed negligence on the part of the deceased, solely relying on the FIR marked as Ex.P1. The FIR cannot be taken as a basis for fixing negligence. The Tribunal failed to consider Ex.P7 - copy of complaint given to the Superintendent of Police, Salem. P.W.2 is not an eye-witness. The deceased Karthick who was coming from side road, stopped to cross the main road. At that time, the driver of the Omni Van belonging to the 1st respondent drove the Omni Van in a rash and negligent manner and dashed on the Motorcycle and caused the accident. The appellant lost her only son aged 18 years. The Tribunal ought to have awarded compensation and prayed for setting aside the award of the Tribunal and for a direction to the respondents to pay the compensation to the appellant.

11. Mr.S.Arunkumar, learned counsel takes notice for the 2nd respondent-Insurance Company and made submissions in support of the award passed by the Tribunal and prayed for dismissal of the appeal.

12. Heard the learned counsel appearing for the appellant as well as the 2nd respondent-Insurance Company and perused the materials available on record.

13. It is the case of the appellant that on 08.01.2012, at Mallikundam to Mecheri main road, while her son was riding the Motorcycle with pillion rider, the driver of the Omni Van belonging to the 1st respondent drove the same in a rash and negligent manner and dashed on the Motorcycle and caused the



accident. Due to the said impact, her son Karthick and the pillion rider fell down and sustained injuries. Her son died due to the injuries caused in the accident. To prove her case, she examined herself as P.W.1, examined the Head Constable of Mechery Police Station as P.W.2 and marked documents, including FIR. On the other hand, it is the case of the respondents that the son of the appellant who was aged 17 years was coming from side branch road to the Highways without seeing the oncoming traffic and tried to cross the road, dashed on the left side front door of the Omni Van and caused the accident. The accident has not occurred due to the negligence of the driver of the Omni Van. To prove their case, they examined R.W.1. The Tribunal considered the pleadings and evidence let in by the parties and rejected the same, holding that the appellant is not an eye witness and she did not examine any eye witness, especially the pillion rider who was traveling along with the deceased, at the time of accident. When a specific question was put to the appellant in cross examination, whether she is going to examine the pillion rider, she replied that she is not going to examine the pillion rider. P.W.2 - Head Constable, examined by the appellant deposed that the accident occurred only due to negligence of the son of the appellant and FIR was registered against him and subsequently the case was closed as charges abated. The contention of the learned counsel appearing for the appellant is that the appellant has given complaint to the Superintendent of Police which was marked as Ex.P7 and the Tribunal failed to consider the same. From the award of the Tribunal, it is seen that Ex.P7 - complaint is dated 19.01.2012 and no action was taken on the complaint given to the Superintendent of Police. The Tribunal considering Ex.P7, held that the negligence cannot be fixed on the driver of the Omni Van based on Ex.P7 alone. The Tribunal also considered the Motor Vehicle Inspector's Report, rough sketch and place of impact of Omni Van and held that the deceased was the tort-feasor and claim petition filed under Section 166 of the Motor Vehicles Act is not maintainable. There is no error in the said finding of the Tribunal, warranting interference by this Court.

14. In the result, the appeal is dismissed and the award of the Tribunal is confirmed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

gsa



To

The Special District Judge,
The Motor Accident Claims Tribunal,
Salem.

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+1cc to Mr.SP.Yuaraj, Advocate, S.R.No.15222

+1cc to M/s.S.Arunkumar, Advocate, S.R.No.16064

C.M.A.No.499 of 2021

AJS (CO)
RVM(12/11/2021)