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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.04.2021

CORAM

THE HON'BLE MR. JUSTICE G.K.ILANTHIRAIYAN

C.M.A.No.916 of 2013
and Cros.Obj.No.5 of 2020

National Insurance Co. Ltd.,
Near Bus Stand,
Tiruchengode through
Divisional Office II,
Ramakrishna Road, Salem - 7.

... Appellant in CMA 916/13/
...2nd Respondent in CMA 916/13/
...1st Respondent in Cros.Obj.No.5/2020

-vs-

1.Tamilarasi

2.Minor Jawahar

(Minor represented by the next friend Mother 1st respondent)

3.Vijayalakshmi @ Vijaya

4.Maheswari ...1 to 4th Respondent/1 to 4th Respondents
in CMA 916/2013/1 to 4th Petitioners in
Cros.Obj.No.5/2020

5.Senthilkumar ...5th Respondent/1st Respondent in CMA 916/13/
2nd Respondent in Cros.Obj.No.5/2020

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the award and decree dated 25.09.2012 made in O.P.No.719 of 2007 on the file of the Motor Accidents Claims Tribunal (Additional District Judge and Special Judge for EC Act cases), Salem.

For Appellant : Mr.D.Bhaskaran

For Respondents: Mr.S.P.Yuvaraj for R1 to R4
R5 Notice served

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the award and decree dated 25.09.2012 made in O.P.No.719 of 2007 of the file of the Motor Accidents Claims Tribunal (Additional District Judge and Special Judge for EC Act cases), Salem.



३.१. प्रयोग ५२८



7. Though they examined P.W.2 as one of the eye witness, the police who registered the case and closed the FIR as undetectable one and no charge sheet has been laid as against the second respondent. In fact, the Motor vehicle inspection report which was marked as Ex.R3 revealed that there is absolutely no damage in the front portion of the bus and as such there is no chance for the offending vehicle to have dashed the deceased Motor Cycle. Unfortunately, the Tribunal wrongly construed that the P.W.2 was the Pillion rider of the deceased Motor Cycle and he lodged a complaint. Whereas one Murugan was the Pillion rider of the deceased Motor Cycle and he only lodged the complaint and he was not examined by the claimant. Therefore, the claimant failed to prove that the first respondent's bus only dashed the deceased Motor Cycle and as such the second respondent is not at all liable to pay any compensation.

8. Per contra, the learned counsel appearing for the claimant vehemently contended that the jurisdiction Police ought not to have closed the FIR as an undetectable one, when P.W.2 was examined by the Police and he had categorically stated that the bus owned by the first respondent herein only dashed the Motor Cycle which was driven by the deceased. His evidence also corroborated the complaint lodged by one Murugan who was Pillion rider of the Motor Cycle. Therefore, the Tribunal had rightly concluded that the second respondent was liable to pay compensation.

9. Insofar as the quantum of the compensation is concerned the Tribunal just awarded a meagre compensation and as such it is liable to be enhanced.

10. Heard Mr.D.Bhaskaran, learned counsel appearing for the appellant and Mr.S.P.Yuvaraj, learned counsel appearing for the respondents 1 to 4.

11. The deceased along with one Murugan were riding Motor Cycle on 20.05.2006 on the Tiruchengode to Pallipalayam main road. At that time, the bus owned by the first respondent driven by his driver in the rash and negligent manner on the same direction dashed the Motor Cycle. Therefore, the deceased sustained grievous injuries and died on the spot. The Pillion rider of the Motor Cycle lodged a complaint and it was registered by the Inspector of Police, Tiruchengode Rural Police Station in Crime No.219 of 2006 for the offence under Sections 279, 337 and 304(A) of IPC. The Inspector of Police, Tiruchengode Rural Police Station also examined P.W.2 who is also one of the eye witness for the accident.



12. Though the claimant failed to examine the Pillion rider, they examined one eye witness as P.W.2, who had categorically deposed that the accident was caused by the first respondent's bus only which dashed the Motor Cycle, due to which the deceased sustained grievous injuries and died on the spot. The Tribunal held that as per the statement of the eye witness who accompanied the deceased at the time of the accident as Pillion rider proves to be an accepted one. He does not mean that the Pillion rider was examined as P.W.2. The Tribunal mean to say the statement recorded by the Inspector of Police, Tiruchengode Rural Police Station and registered FIR in Crime No.219 of 2006.

13. Therefore, the Tribunal rightly held that the vehicle owned by the first respondent dashed the Motor Cycle and due to which the deceased sustained grievous injuries and died on the spot. Therefore, the second respondent is held liable to pay compensation.

14. Insofar as the quantum of the compensation is concerned, the deceased was aged about 29 years at the time of accident and he was earning a sum of Rs.6000/- per month by doing maistry work as stated by P.W.1 who is the wife of the deceased. Therefore, the Tribunal rightly applied the multiplier method at 17 and deducted 1/3rd towards personal expenses of the deceased and awarded reasonable compensation. Therefore, the appeal filed by the second respondent has no merits and it is liable to be dismissed.

15. In the result, this Civil Miscellaneous Appeal is dismissed and the Cross Objection is also dismissed. No order as to costs.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

rna

To

1. The Additional District Judge and Special Judge,
for EC Act Cases,
(Motor Accident claims Tribunal),
Salem.



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

+1CC to Mr.S.P.Yuvaraj, Advocate SR.No.23595

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