



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.03.2021

CORAM:

THE HON'BLE MR.JUSTICE D.KRISHNAKUMAR

CMA.No.929 of 2013

1. P.Veeralakshmi Ammal (died)
W/o. Late Perumal Naicker ...Appellant/Petitioner
- 2.P.Veeraperumal
- 3.P.Ramachandran
- 4.P.Ramasubbu
- 5.R.Kosalai ... Appellants/2 to 5 Respondents
(Respondents 3 to 6 transmitted as appellants
2 to 5 vide order of this Court dated 07.06.2013)
made in CMA No.929/2013

..Vs..

1. Chinnathayammal ...Respondent/1st Respondent
2. National Insurance Company,
High Road, Tirunelveli Junction.
...Respondent/ Respondent

Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and decree dated 10.11.1982 made in M.C.O.P.No.46 of 1982 on the file of Sub Judge, (Motor Accidents Claims Tribunal), Tirunelveli.

For Appellants : M/s.P.Valliappan
(Amicus curae)
For Respondents : Mr. S.Vadivel - R2

JUDGMENT

Dissatisfied with the judgment and decree, dated 10.11.1982 in MCOP.No. 46 of 1982 passed by the tribunal awarding compensation of Rs.50,000/- along with interest at the rate of 6% per annum, the claimant are before this Court for enhancement of compensation.

2. It is the case of the appellant herein that on 12.03.1980 at about 10.AM the deceased Perumal Naicker was going from North to South along Tuticorin Ettayapuram road keeping to his left. At the time the bus driver TNR 4056 belonging to the 1st respondent driven by her driver in a rash and negligent manner and in a great speed came from behind and



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dashed against the said Perumal Naicker. As a result, the deceased Perumal Naicker's right leg was seriously injured and he was taken by the same to the Tuticorin Government Hospital. In spite of the best treatment, he died on 23.03.1980. The accident had occurred only due to the rash and negligent driving on the part of the 1st respondent's driver. Hence, the wife of the deceased/appellant herein filed a claim petition claiming compensation for a sum of Rs.50,000/-. The tribunal based on the evidence and documents, has awarded a sum of Rs.2,000/- as compensation payable by the 1st respondent/owner of the vehicle. Challenging the said compensation, the claimant is before this Court for enhancement.

3. On the side of the claimants, two witnesses P.W.1 & P.W.2 were examined and three documents Ex.A1 to A3 were marked. On the side of the respondents, one witness RW1 was examined and one document Ex.B1 was marked.

4. Heard Mr.P.Valliappan, learned counsel appointed as Amicus curie for the appellants and Mr.S.Vadivel, learned counsel appearing for the 2nd respondent and perused the materials available on record.

5. From a perusal of the award, it is seen that the claimant herself had made a statement that the respondent 3 to 6 were not depending on the deceased, therefore, they are not entitled for any compensation. But in the evidence, the claimant stated that she has filed the claim petition not only for herself but also for her children. In view of the above contradictory statement made by the appellant, the tribunal by considering the age of the deceased and the poor financial position, has awarded a sum of Rs.2000/- as compensation.

6. Challenging the said quantum of compensation, the claimant has preferred this appeal for enhancement. The main ground raised in the appeal is that the tribunal failed to consider that even though the other heirs of the deceased were not impleaded as petitioners, they having not filed any petition and the petitioner herself admitting that she is claiming compensation for all children, the compensation as claimed should have been awarded for all the legal heirs. Though the appellant had strongly raised the above ground, she failed to implead her children in the present appeal as appellants.

7. It is seen from the records that this Court suo-motu appointed the learned counsel Mr.Vallippan as Amicus Curie to represent on behalf of the appellant. Subsequently, pending appeal the appellant/claimant died and the legal heirs of the deceased appellant, who were already on records as respondents 3 to 6 were transmitted as appellants 2 to 5 in the appeal. Notice was also sent to the transmitted appellants 2 to 5 and the same was returned with an endorsement 'left' in respect



respondents 4 & 5. The learned counsel appointed as Amicus curie for the appellants submitted that there is no response from appellants 2 to 5 and they are also not interested in prosecute the case for enhancement of compensation.

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8. In view of the submissions made by the learned counsel appointed as Amicus curie that the transmitted appellants 2 to 5 are not interested in conducting case for enhancement and the statement made by the deceased 1st appellant/claimant that the appellants 2 to 5 are not dependent on the deceased, the appeal is liable to be dismissed.

9. In fine, this Civil Miscellaneous Appeal is dismissed. No costs.

Sd/-
Assistant Registrar(CO)

//True copy//

Sub Assistant Registrar

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To

1. The Sub Judge
(Motor Accidents Claims Tribunal),
Tirunelveli.

Copy To

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

+1cc to Mr.P.Valliappan, Advocate SR.No.13303

+1cc to Mr.S.Vadivel, Advocate SR.No.12642

CMA.No.929 of 2013

PP(CO)
GMY(20/09/2021)