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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.01.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.3468 of 2019

1.Selvi

2.Dhamodharan

3.Ayyappan

.. Appellants

Vs.

1.Purusothaman

2.The Cholamandalam General
Insurance Co. Ltd.

Represented by its Branch Manager
Dare house, 2nd floor
NLC Bose road
Chennai-600 001.

.. Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 09.10.2018 made in M.C.O.P.No.10 of 2013 on the file of Motor Accident Claims Tribunal, Special District Court, Villupuram.

For Appellants : Mr.M.Manokar
for Mr.R.Rajarajan

For R1 : No appearance

For R2 : Mr.M.B.Raghavan

J U D G M E N T

This matter is heard through 'Video-conferencing'.

The Civil Miscellaneous Appeal is filed challenging the order of dismissal dated 09.10.2018 made in M.C.O.P.No.10 of 2013 on the file of Motor Accident Claims Tribunal, Special District Court, Villupuram.



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2.The appellants are claimants in M.C.O.P.No.10 of 2013 on the file of Motor Accident Claims Tribunal, Special District Court, Villupuram. They filed the said claim petition claiming a sum of Rs.20,00,000/- as compensation for the death of one Thangarasu, who died in the accident that took place on 18.04.2008.

3.According to the appellants, on the date of accident, i.e., on 18.04.2008, at about 1.00 p.m., while the deceased Thangarasu was riding in his motorcycle from Kalmandabam to Kondur on the extreme left side of the road, near Ramareddikulam, the driver of the Carrier belonging to the 1st respondent, which was coming behind the motorcycle drove the same, in a rash and negligent manner, dashed against the deceased and caused the accident. In the accident, the deceased sustained fatal injuries and died in the hospital. Therefore, the appellants have filed the above claim petition claiming compensation as against the respondents.

4.The 1st respondent, owner of the Carrier, remained exparte before the Tribunal.

5.The 2nd respondent/Insurance Company insurer of the Carrier filed counter statement denying the averments made by the appellants and stated that there is a delay in lodging the complaint before the Police. The death of the deceased Thangarasu was not due to the injuries sustained by him. The driver of the vehicle belonging to the 1st respondent was not responsible for the accident. The accident has occurred only due to negligence act of the deceased. The driver of the vehicle belonging to the 1st respondent did not possess valid driving license to drive the vehicle. The legal heirs of the deceased Thangarasu filed a claim petition in M.C.O.P.No.149 of 2009 on 09.02.2009. On 15.07.2009, there was a settlement arrived at between the 2nd respondent and the claimants in M.C.O.P.No.149 of 2009 before the Legal Services Authority, Villupuram and the 2nd respondent has deposited the cheque on 12.08.2009 for Rs.2,00,000/- and Rs.10,800/-. The claimants in M.C.O.P.No.149 of 2009 appeared before the Legal Service Authority, Villupuram, and on verification of the legal heir certificate, the settlement was recorded. Therefore, the appellants are not the legal heirs of the deceased Thangarasu and hence, the claim petition may be dismissed. Therefore, the 2nd respondent/Insurance Company is not liable to pay any compensation to the appellants. The 2nd respondent/Insurance Company has also denied the age, avocation and income of the deceased. In any event, the compensation claimed by the appellants is excessive and prayed for dismissal of the claim petition as against the respondents.



6. Before the Tribunal, the 1st appellant, wife of the deceased examined herself as P.W.1, one Dhanraj, eye-witness to the accident was examined as P.W.2 and eight documents were marked as Exs.P1 to P8. The respondents examined one Vinothkumar as R.W.1 and marked the judgment of the Lok Adalat as R.W.1. One Syed Mohammed, was examined as C.W.1 and the legal heir certificate issued by C.W.1 was marked as Ex.C1.

7. The Tribunal considering the pleadings, oral and documentary evidence, dismissed the claim petition holding that the compensation cannot be granted twice for the same accident.

8. Against the said order of dismissal dated 09.10.2018 made in M.C.O.P.No.10 of 2013, the appellants have come out with the present appeal.

9. The learned counsel appearing for the appellants contended that the appellants alone are the only legal heirs of the deceased Thangarasu as per Ex.P8 and Ex.C1, legal heir certificates. The Tribunal erroneously dismissed the claim petition filed by the appellants based on Ex.R1, the award of the Lok Adalat passed in favour of one Latha and her two minor children, who are the third parties to the deceased Thangarasu. The 2nd respondent has not proved that the said Latha and her minor children are the only legal heirs of the deceased Thangarasu. The amount paid by the 2nd respondent to some third parties could not exonerate them from their liability to pay the compensation to the real legal heirs and dependants of the deceased Thangarasu. The appellants filed an application to implead them in M.C.O.P.No.149 of 2009, which was dismissed as the 2nd respondent opposed the same. The appellants are not parties to the award passed in M.C.O.P.No.149 of 2009. The Tribunal misconstrued the evidence of C.W.1, who deposed that the appellants are the legal heirs of the deceased Thangarasu and prayed for setting aside the award of the Tribunal and for a direction to the 2nd respondent to pay compensation to the appellants.

10. The learned counsel appearing for the 2nd respondent/Insurance Company contended that the Tribunal after considering all the materials on record, rightly dismissed the claim petition and prayed for dismissal of the appeal.

11. Though notice has been served on the 1st respondent and his name is printed in the cause list, there is no representation for the 1st respondent either in person or through counsel.

12. Heard the learned counsel appearing for the appellants as well as the learned counsel appearing for the 2nd



respondent/Insurance Company and perused the entire materials on record.

13. From the materials on record, it is seen that it is the case of the appellants that they are the legal heirs of the deceased Thangarasu, who died in the accident that occurred on 18.04.2008, but filed claim petition claiming compensation for the death of Thangarasu in the year 2013. It is the case of the 2nd respondent before the Tribunal that one Latha and her two minor children filed M.C.O.P.No.149 of 2009 on the file of the Principal District Court, Villupuram, claiming compensation for the death of very same Thangarasu in the very same accident. The matter was referred to Lok Adalat. The said Latha and officials of the 2nd respondent appeared before the Lok Adalat, arrived at a compromise and the 2nd respondent agreed to pay a sum of Rs.3,90,000/- to the claimants in M.C.O.P.No.149 of 2009. The said award was passed in the Lok Adalat on 15.07.2009 and as per the award, the 2nd respondent deposited the amount arrived to the credit of M.C.O.P.No.149 of 2009. The claimants in M.C.O.P.No.149 of 2009 appeared before the Legal Service Authority, Villupuram and on verification of the legal heir certificate, the settlement was recorded by the Lok Adalat. Therefore, the 2nd respondent/Insurance Company is not liable to pay any compensation claimed by the appellants. The Tribunal examined one Syed Mohammed as Court Witness and marked the legal heir certificate as Ex.C1 through C.W.1. C.W.1 in his evidence has deposed that he only issued legal heir certificate to the appellants after enquiry. The Tribunal considering the fact that two different legal heir certificates were issued to two different persons and that one of the claimants have already filed M.C.O.P.No.149 of 2009 in the year 2009 itself and the same was settled before the Lok Adalat on 15.07.2009 on verification of the legal heirs of the deceased Thangarasu, dismissed the claim petition filed by the appellants holding that the appellants can claim compensation only in M.C.O.P.No.149 of 2009 and cannot award separate compensation in the present M.C.O.P.

14. From the materials on record, it is seen that the appellants have not approached the Court at earliest point of time, but filed claim petition only in the year 2013 after five years of the accident, which took place on 18.04.2008, while the award was passed by the Lok Adalat in M.C.O.P.No.149 of 2009 on 15.07.2009 itself. The learned counsel appearing for the appellants contended that the appellants filed an application in M.C.O.P.No.149 of 2009 to implead them as parties and the same was dismissed on the objection raised by the counsel for the 2nd respondent. The learned counsel for the appellants has not furnished any details as to when the said application was filed, the number of the application and date of the dismissal.



Further, the appellants have not taken any further proceedings challenging the dismissal of the said application or award dated 15.07.2009 passed in Lok Adalat. In view of the above materials, the appellants are not entitled to maintain the present claim petition. There is no error in the award of the Tribunal dismissing the claim petition warranting interference by this Court.

15.In the result, the Civil Miscellaneous Appeal is dismissed. No costs.

Sd/-
Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

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To

1.The Special District Judge
(Motor Accident Claims Tribunal
Villupuram.

+1cc to Mr.R.Raja Rajan, Advocate, S.R.No.3159

C.M.A.No.3468 of 2019

PP(CO)
CB(08/09/2021)