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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.09.2021

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THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM
and
THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

C.M.A. No.3980 of 2019

1.P.Thirugnanam
2.S.Dhanam
3.Sumathi

...Appellants/Petitioners

Vs.

1. M.E.Ravi
2. Royal Sundaram Alliance Insurance Co. Ltd.,
No.45, Sundaram Towers,
Whites Road,
Chennai - 14.

...Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, 1988 against the judgment and decree dated 26.03.2019 in M.C.O.P.No.1422 of 2014 by the Motor Accidents Claims Tribunal (II Small Causes Court), Chennai.

For Appellants : Mr.R.Subramanian
For Mr.C.Kathiresan

For Respondents : Notice Served (R-1)

Mr.M.B.Raghavan for R-2
For Mr.N.Vijayaraghavan

J U D G M E N T

(K.KALYANASUNDARAM, J.,)

The appeal is heard through video conferencing.

2. This appeal is directed against the Judgment and Decree passed by the Motor Accidents Claims Tribunal (II Small Causes Court), Chennai in M.C.O.P.No.1422 of 2014, wherein the Tribunal dismissed the claim petition.



3. The claim petition was filed by the appellants seeking compensation of Rs.41,00,000/- for the death of Ramadas, who died in a motor vehicle accident that had taken place on 06.07.2009 at 07.45 hours. It is the case of the claimants that the deceased was working as cleaner in the Tusker Turbo Tractor bearing Reg.No.AP-03-Y-0149 and it was plying with mine stones along Pichanur Nagalapuram Road. When the said tractor was proceeding near Ramagiri, the driver-Vasu drove it in a rash and negligent manner and dashed against a tamarind tree. Thereafter, the vehicle was capsized and the deceased, who was a clear sufferer of grievous injuries and died on the spot. The claimants are parents and sister of the deceased.

4. The owner remained exparte and the claim petition was resisted by the Insurance Company, the second respondent herein. In the counter, it has been stated that the driver-Vasu was sleepy and he asked the deceased Ramadas to drive the said vehicle and when he drove the vehicle, he caused the accident. It is also stated that the deceased Ramdas was not holding a valid driving licence at the time of accident. That apart, they have denied the age, occupation and monthly income of the deceased.

5. During trial, parties have adduced oral and documentary evidence. In order to prove the negligence, the claimants examined P.W.2-Narasimhalu as a witness to the incident. They produced Ex.P1-F.I.R., Ex.P4-Judgment passed in the Criminal Court.

6. It appears that the driver-N.Vasu was prosecuted for permitting the deceased who was working as a cleaner to drive the offending vehicle at the time of accident. The First Information Report shows that the vehicle was driven by the deceased and he was responsible for the accident. The documents produced by the claimants have established that the offending vehicle was not driven by the driver, but by the deceased, who was employed as a cleaner in the vehicle. P.W.2 has also not fully supported the case of the claimants. The Tribunal having noted the above discrepancies in the evidence held that the claimants are not entitled for compensation. Aggrieved over the Judgment, the present appeal has been filed.

7. We have heard the learned counsel for the parties and perused the materials available on record.

8. In the instant case, it is clearly averred in the claim petition that the offending vehicle was driven by the driver-Vasu in a rash and negligent manner and dashed against a



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tamarind tree. It is also stated that the vehicle got capsized, in which, the deceased suffered grievous injuries and died on the spot. Ex.P1-FIR was registered against the driver for his negligence in permitting the deceased to drive the lorry at the time of accident. A Final Report was filed and he was prosecuted for the said charge and convicted by the criminal Court. Ex.P4 is the Judgment passed in the criminal case. So, in our considered view, the finding of the Tribunal that the claimants have not proved their case does not warrant interference of this Court.

9. It is well settled that once the claimants approach the Tribunal seeking compensation under Section 166 of the Motor Vehicles Act, the burden of establishing negligence on the part of the driver or owner of the vehicle is on the claimants. [2012 AC 1305] (Surender Kumar Arora and another Vs. Dr.Manoj Bisla and others).

10. Be that as it may, it is an admitted fact that deceased Ramadas was employed as a cleaner in the said lorry at that relevant point of time. In similar circumstances, this Court in 2004 ACJ 1790 [Oriental Insurance Co. Ltd., V. Krishnan and others], has held that under Section 3 of the Workmen's Compensation Act, the deceased is entitled for compensation, if the award is higher than the amount of "no fault liability" awarded under Section 140 of the Motor Vehicles Act.

11. The relevant paragraph of the above said judgment is extracted hereunder:-

"5. Counsel also invited our attention to a judgment of this Court in the case of Oriental Insurance Co. Ltd. v. Kalliya Pillai and others, 2002 (4) CTC 469 = 2001 1 L.W. 113, where the Court took the view that even the liability under Workmen's Compensation Act, 1923 may be determined by this Court having regard to the extent of the coverage under the policy after it was found that the claim made before the Tribunal under the Motor Vehicles Act is not maintainable. The Insurer appellant does not dispute the fact that the policy covers the liability of the insured to his employee under the Workmen's Compensation Act. Under Section 3 of that Act negligence of the workmen who dies in an accident arising out of and in the course of his employment does not absolve the employer of the obligation to pay compensation in accordance with the provisions of that Act.



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6. Having regard to this position, we deem it just to hold that the Insurer is liable to pay compensation payable in accordance with the provisions of the Workmen's Compensation Act. If the amount of such compensation is higher than the amount of the 'No fault liability' under Section 140 of the Motor Vehicles Act, Insurer will not be liable to make the payment under Section 140 (5) of the Motor Vehicles Act. If the amount of the no fault liability is higher, then no amount need be paid under the Workmen's Compensation Act, as the claimant is entitled to the higher of the two amounts, but not both. The order under appeal which directs payment of Rs. 2.00 lakhs to the parents of the deceased on the reasoning that though the negligent employee could not have claimed compensation, nevertheless his parents can, is set aside."

12. In this case, the claimants have proved that the deceased died at the age of 30 years. Ex.P5 is the postmortem certificate. Ex.P7 is the death certificate. Considering the fact that the deceased was a cleaner in the offending lorry at the time of accident and he died at the age of 30 years, we are of the opinion that the claimants can be awarded compensation under the Workmen's Compensation Act by following the Judgment of Division Bench, referred above. It would be appropriate to fix his monthly income at Rs.4,000/- and taking the age factor as 207.98, the loss of income is assessed at Rs.4,15,960/- [Rs.4000 x 50% x 207.98]. It is relevant to point out that the deceased is a bachelor and 50% has to be deducted for his personal expenses. In addition, Rs.6,000/- is granted for funeral expenses and the total compensation amount comes to Rs.4,21,960/-. The claimants would be entitled for the said amount with interest at the rate of 12% per annum from the date of the claim petition till the date of realization.

13. There is no dispute that the first respondent is the owner of the vehicle and the second respondent is the insurer and the policy was in force at the time of accident. Therefore, the second respondent is directed to pay the award amount of Rs.4,21,960/- along with interest at the rate of 12% per annum within twelve weeks. On such deposit is being made, the appellants/claimants are permitted to withdraw the award amount at the ratio of 30:50:20. It is made clear that the father, the first appellant is entitled for 30%; the mother, the second appellant is entitled for 50% and the sister, the third appellant is entitled 20% of the award.



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14. In the result, the Civil Miscellaneous Appeal is partly allowed. There is no order as to costs.

Sd/-
Assistant Registrar

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Sub Assistant Registrar

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To

1. The Motor Accidents Claims Tribunal
(II Small Causes Court),
Chennai.
2. The Section Officer,
V.R.Section, High Court, Madras.

+2ccs to Mr.C.Kathiresan, Advocate, S.R.No.44194

C.M.A. No.3980 of 2019

SMI[co]
NSK 02/12/2021