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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.01.2021

CORAM:

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

C.M.A.No.644 of 2017

1. S.Kalai Selvi
Wife of (late) Sethupathy
2. Sangeetha (minor)
3. Prabakaran (minor)
(2 and 3 minors are rep. by their mother/natural guardian
Kalaiselvi)
4. Bakkiam (since deceased)

(Cause title accepted vide order of court dated 2.10.2009
made in M.P.No.2 of 2009) ...Appellants/Petitioners

Vs

- 1.T.R.Athiyappan
- 2.The Oriental Insurance Company Ltd.,
59, Raja Street,
Gobichettipalayam,
Erode 638 476. ...Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 06.09.2007 made in M.C.O.P.No.534 of 2003 on the file of the Motor Accidents Claims Tribunal cum Principal District Judge, Salem.

For Appellant : Mr.S.P.Yuvaraj

For Respondents : R1-No Appearance
Mr.J.Chandran for R2



J U D G M E N T

Heard the learned counsel for the appellant and the learned counsel for the respondent Insurance Company.

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2. The appeal is filed by the claimants being aggrieved by the dismissal of the claim petition by the Motor Accident Claims Tribunal, Salem.

3. The short facts of the case is that on 04.03.2001 at about 10 p.m., while Sethupathy along with his friend Rajendran in the pillion while riding his TVS 50 motor cycle bearing registration No.27 T 6473 near Kamalapuram on Omalur to Dharmapuri Road colluded with a lorry bearing Registration No.TN28/V 3639 coming from the opposite direction. In the said accident, the said Sethupathy died on the spot. A criminal complaint was registered against the lorry driver. The claimants who are wife, 2 minor children and mother of the deceased preferred petition seeking compensation of Rs.10 lakhs on the ground that the deceased was employed as a driver in the Tamilnadu Transport Corporation earning Rs.6400/- per month and due to his demise, they have lost his income and consortium. Pending the claim petition, the mother of the deceased died.

4. Before the Tribunal, the claimants marked 10 exhibits and examined two witnesses.

5. The claim petition was contested by the respondent company on the ground that the claimants have to prove the accident and their status as legal representative and dependents of the deceased. Denying the negligence of the lorry driver, attributed rash and negligence on the part of the deceased. Further, non joinder of the owner of the two wheeler, which the deceased travelled and the insurance of the said two wheeler rendered the claim petition defective and liable to be dismissed.

6. The Tribunal dismissed the claim petition on the ground that the claimants have not examined the first informant or the pillion rider who is the eyewitness to the accident. The claimants have not proved the negligence of the lorry driver. Therefore, the Insurance Company as well as the lorry owner were exonerated from paying any compensation.

7. In this appeal, the claimants have stated that the Tribunal has erred in dismissing the claim petition inspite of the fact that the First Information Report was registered against the lorry driver and he has not contested the case either before the criminal court or before the Motor Accident Claims Tribunal. When P.W.2, the eyewitness has spoken about the negligence on the part of the lorry driver, the Tribunal without



any justification has rejected the evidence of the eyewitness.

8. Learned counsel for the Insurance Company submitted that the probability of P.W.2 being present at the scene of accident is highly remote taking into consideration the time of accident and place of accident. Therefore, the Tribunal has rightly disbelieved the evidence of P.W.2, since the best evidence available was not produced by the claimant.

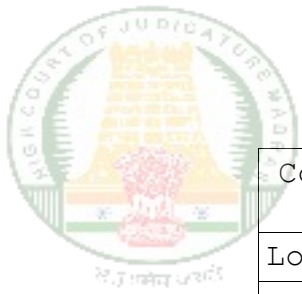
9. Heard the learned counsel for the appellant and the respondent Insurance Company. Perused the records.

10. To substantiate the claim and prove the negligence on the part of the lorry driver, the claimants have relied upon Ex.P6 F.I.R and the ocular evidence of P.W.2. The documentary evidence and the oral evidence prima facie proves that the accident occurred due to the negligence of the lorry driver. When there is no contra evidence let in by the Insurance Company to prove the diligence on the part of the lorry driver, the Tribunal ought not to have disbelieved the evidence of P.W.2, just because he admits that he is known to the deceased. Therefore, this Court is of the view that the Tribunal has erroneously dismissed the claim petition.

11. The salary certificate of the deceased is marked as Ex.P3. The salary certificate for the month of January 2001 indicates as a driver in the Transport Corporation, the deceased was drawing salary of Rs.6,468/-. His basic pay is Rs.4,460/-. At the time of accident, he was 38 years old. He left behind his wife, two minor children and the aged mother. Therefore, he would have spent 1/3 of his income for his personal expenditure and contributed the balance 2/3rd of his earning to his family. Pending the claim petition, his mother died and by this time, minor children have attained majority.

12. Taking note of all these facts, the claimants/appellants are awarded the following compensation:

Compensation under Various Heads	Award passed by this Court
Pecuniary loss (6500+3250)X12X15X2/3	Rs.11,70,000/-
Funeral Expenses	Rs. 15,000/-
Loss of love and affection for minor children 2 and 3 (Rs.20,000/- each)	Rs. 40,000/-



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Compensation under Various Heads	Award passed by this Court
Loss of consortium for wife	Rs. 40,000/-
Total	Rs.12,65,000/-

13. Accordingly, this Court awards a sum of Rs.12,65,000/- payable with interest at the rate of 7.5% p.a. from the date of petition till the date of realisation. The respondent Insurance Company is directed to deposit the amount within a period of twelve weeks from the date of receipt of a copy of this judgment. On such deposit, the claimants/appellants 1, 2 and 3 shall apportion the amount equally with proportionate interest. The same shall be permitted to withdraw on appropriate application.

14. Accordingly, the Civil Miscellaneous Appeal is partly allowed. No order as to costs.

Sd/-
Assistant Registrar (CS VIII)

//True copy//

Sub Assistant Registrar

vri

To

The Motor Accidents Claims Tribunal
cum Principal District Judge,
Salem.

+1cc to Mr.S.P.Yuvaraj, Advocate SR.No.3647

CMA NO.644 OF 2017

KJ(CO)
HS(23/07/2021)