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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.04.2022

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THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.M.A.No.848 of 2022

1.Raja
2.Rajathi
3.Silambarasan ...Appellants/Claimants

Vs

1.Indhirani Rajmohan
2.The Branch Manager,
The Oriental Insurance Company Ltd.,
33-C/10, Thanjavur road,
President Lodge,
Thiruvarur Taluk & Munsif,
Thiruvarur District. ...Respondents/Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the award and Decree dated 12.10.2021 made in M.C.O.P.No.10 of 2019 on the file of the Motor Accident Claim Tribunal, Chief Judicial Magistrate, Thiruvarur.

For Appellants : Mr.P.Tamilavel

JUDGEMENT

The claimants are the appellants before this Court challenging the dismissal of their claim petition in toto.

2. The claimants are the children of the deceased Panneerselvam who is stated to be a lorry driver by profession under the 1st respondent. It is their case that on 30.09.2011 at about 11.15 AM, a lorry bearing Registration No. TN 51 X 5397 in which the deceased Panneerselvam was working did not start and the said Panneerselvam got down from the driver seat and opened the bonnet to start it with the self starter. The self starter worked and the lorry moved forward and dashed against the wall, as a result of which, the said Panneerselvam got trapped between the lorry and wall and sustained serious injuries. He was admitted at Thiruvarur Medical College Hospital, where he died during treatment. Therefore, the appellants had filed an



application under Section 163 A claiming compensation for the death of the said Paneerselvam.

3. The 1st respondent remained ex parte and the 2nd respondent Insurance Company had taken out the plea that the Insurance Company is not liable to pay compensation since the petitioner is tortfeasor himself, he cannot seek compensation. The 2nd respondent Insurance Company had also stated that in case the Court came to the conclusion that negligence or contributory negligence, then the award may be apportioned.

4. After considering the evidence on record and taking into account the Judgement of the Hon'ble Supreme Court reported in AIR 2020 SC 527 - Ramkhiladi and Others Vs. United India Insurance Co. Ltd., the Tribunal held that the claimants are not entitled to claim compensation.

5. Challenging the said order, the claimants are before this Court.

6. Admittedly, the accident was occurred only on account of negligence on the part of the deceased himself and there is no third party intervention or third party negligence which has contributed the accident. The deceased being tortfeasor himself, the appellants cannot be allowed to claim compensation for the death of the said Paneerselvam.

7. In the light of the above, I see no reason to interfere with the order passed by the Tribunal. The Civil Miscellaneous Appeal is dismissed. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To,

The Motor Accident Claims Tribunal,
Chief Judicial Magistrate, Thiruvavarur

+1cc to Mr.P.Tamilavel, Advocate SR. No. 26058

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SSI (CO)
PR (24/05/2022)