



C.M.A.No.1937 of 2018

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :11.09.2023

CORAM

THE HON'BLE MR. JUSTICE P.VELMURUGAN

C.M.A.No.1937 of 2018

Sundar Rajan

... Appellant

Vs.

1. G.Sureshkumar

2. The New India Assurance Company Limited,
No.45, Moore Street, Chennai 1,
Now at Door No.232, NSC Bose Road,
Bombay Mutual Building, Chennai -1.

3. Anuradha

... Respondents

PRAYER:

Civil Miscellaneous Appeal filed under Section 173 of M.V.Act 1988 for enhancement of compensation against the judgment and decree dated 23.07.2013 in M.C.O.P.No.2203 of 2011 on the file of the Motor Accidents Claims Tribunal at Chennai (III Judge, Court of Small Causes at Chennai).



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For Appellant : M/s.Ramya V.Rao

For R1 and R3 : No appearance

For R2 : M/s.S.R.Sumathy

J U D G E M E N T

This Civil Miscellaneous Appeal has been filed by the claimant against the Award and decree dated 23.07.2013 passed in M.C.O.P.No.2203 of 2011 on the file of the Motor Accidents Claims Tribunal at Chennai (III Judge, Court of Small Causes at Chennai).

2. Facts of the case are that on 16.06.200 at about 18.30 hours, while the deceased was travelling as a pillion rider in a motor cycle bearing Registration No.TN-10-W-6285, proceeding from East to West, the rider/third respondent herein, of the above motor cycle, drove the vehicle in a rash and negligent manner and hit the share auto. As a result, the pillion rider sustained fatal injuries and died. The appellant being the sole legal heir of the deceased, filed the claim petition.



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3. Learned counsel for the appellant/claimant submitted that the accident was not in dispute. Injuries sustained by the deceased are also not in dispute. However, the Tribunal has erroneously awarded the compensation under “no fault liability” under Section 170 of Motor Vehicles Act, which warrants interference by this Court.

4. Learned counsel for the second respondent/Insurance company submitted that the accident occurred due to rash and negligent driving of the share auto, which dashed against the motor cycle. The said auto was not insured with any of the Insurance Company. Since there is no insurance coverage and by considering the facts, the Tribunal has awarded Rs.50,000/- under “no fault liability”. The appellant has not proved that the motor cycle was validly insured with the second respondent/Insurance Company. Therefore, there is no merit in the appeal and the same is liable to be dismissed.

5. Heard and perused the records.



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6. The Accident is not in dispute. The manner of the accident is also not in dispute. The deceased sustained injuries, is also not in dispute. At the time of accident, the offending vehicle was not insured with the second respondent/Insurance Company. Therefore, there is no insurer and insured relationship between the owner of the offending vehicle and the second respondent/Insurance Company. The Tribunal has concluded that the accident had occurred only due to rash and negligent driving of the driver of the unknown share auto. Further, the Tribunal has held that though the claimant failed to prove the negligence on the part of the rider of the motor cycle, but it is proved that the accident had occurred and the pillion rider died due to the accident. Hence, the second respondent/Insurance Company as the insurer of the erred motor cycle, is liable to pay the compensation to the claimant. Hence, considering the above fact that the Tribunal has held that the claimant is entitled only to get the compensation under the head “no fault liability”.



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7. This Court does not find any perversity in appreciation of the evidence by the Tribunal and there is no merit in the appeal and the same is liable to be dismissed. Accordingly, Civil Miscellaneous Appeal is dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

11.09.2023

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Index: Yes/No

Speaking Order: Yes/No

Neutral Citation: Yes/No

To

1. The III Judge,
Court of Small Causes,
Motor Accidents Claims Tribunal at Chennai.
2. The Section Officer,
VR Section,
High Court of Madras.



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P.VELMURUGAN, J.

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