



C.M.A.No.3494 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.11.2023

CORAM :

THE HONOURABLE MR. JUSTICE M. DHANDAPANI

C.M.A.No.3494 of 2019

K.R.Anbalagan

... Appellant

Vs.

1. V.S.Palani
2. The Manager,
Bharathi AXA General Insurance Company Limited,
No.162, Metro Plaza,
II-Floor, Opp to Spencer Plaza,
Mount Road, Chennai – 600 002.
3. Nam Alwar
4. Bakthan
5. Krishnaveni
6. Santhakumari
7. Van Mathi

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgement and Decree dated 30.10.2017 made in MCOP.No.149 of 2015 on the file of MACT-I Special District Court at Tiruvallur and to enhance the compensation.

For Appellant : Mr.MA.P.Thangavel

For Respondents : Notice Dispensed With
for R1, R3 to R7
M/s.K.Poomalar [R2]



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JUDGEMENT

This civil miscellaneous appeal has been filed against the Judgement and Decree dated 30.10.2017 made in MCOP.No.149 of 2015 on the file of MACT-I Special District Court at Tiruvallur and to enhance the compensation.

2. It is the case of the appellant that on 29.05.2013 at about 1:30 p.m., when the deceased was walking on the left side of the road at Tiruvallur, at that time, the first respondent who is the rider of a two wheeler bearing Reg.No.TN 02 AW 1022 has driven the vehicle in a rash and negligent manner and dashed against the deceased Madhialagan, due to which the deceased sustained grievous injuries and died in the hospital. Claiming compensation for a sum of Rs.4,00,000/- the appellant / claimant has filed the claim petition.

3. Before the Tribunal the claimant examined P.W.1 and P.W.2 and examined Exs.P1 to P.9. The respondents examined R.W.1 and



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R.W.2 and marked Exs.R1 to R5. After considering all the oral and documentary evidence, the Tribunal, awarded a sum of Rs.50,000/- as compensation to the claimant. Not satisfied with the same, the appellant/claimant is before this Court.

4. The learned counsel for the appellant submits that the appellant is a married person whereas, the deceased is a bachelor. He further submits that the deceased had contributed his earnings towards the family members of the appellant, for which the appellant examined himself as P.W.1 and narrated the contribution made by the deceased towards the family members of the appellant. Though all those facts were established before the Tribunal, the Tribunal awarded only a sum of Rs.25,000/- towards the head love and affection and a sum of Rs.25,000/- towards funeral expenses which is *per se* unsustainable.

5. The learned counsel for the second respondent / insurance company submits that though P.W.1 claims that the deceased contributed towards the family expenses of the appellant, however, the fact remains that the appellant has not shown any proof with regard to the contribution



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made by the deceased towards the family members of the appellant.

Hence, mere evidence of P.W.1 cannot be a ground to grant compensation to the appellant. He further submits that there is no proof with regard to the monthly income of the deceased. More so, the appellant failed to prove that he is the only legal heir of the deceased. In the absence of any such proof, the award passed by the Tribunal warrants no interference. Accordingly, he prayed to dismiss this appeal.

6. Heard the learned counsel for the appellant and the learned counsel for the second respondent and perused the materials placed on record.

7. On a perusal of the award reveals that the deceased was aged 59 years. It is the case of the appellant that the deceased was living along with the appellant and his family members and the deceased was the only person who contributed towards the family expenses of the appellant, however, no such proof with regard to the contribution made by the deceased was disclosed / proved by the appellant. In the absence of any such proof, the claim made by the appellant cannot be sustained. Upon



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considering the oral and documentary evidence, the Tribunal has passed the award which cannot be interfered with.

8. Accordingly, the Civil Miscellaneous Appeal is dismissed. The award dated 30.10.2017 passed in M.C.O.P.No.149 of 2015 on the file of Motor Accident Claims Tribunal I, Tiruvallur is confirmed. There shall be no order as to costs.

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Index : Yes / No
Speaking order / Non speaking order
Neutral Citation Case : Yes / No
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To
1.MACT-I Special District Court at Tiruvallur.
2.The Section Officer, V.R.Section, High Court, Madras.



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M.DHANDAPANI, J.

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