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C.M.A.No.1280 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 13.12.2023

CORAM:

MR.JUSTICE N.SESHASAYEE

C.M.A.No.1280 of 2022

1.Ramalingam
2.Dhanalakshmi
3.Narmatha

... Appellants

Vs.

1.Selvam

2.The Branch Manager
United India Insurance Company Ltd.
No.50-A, Pallivasal Street
Perambalur 621 212

... Respondents

PRAYER: This Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the order and decretal order in M.C.O.P.No.208/2016 dated 23.11.2021, on the file of Motor Accidents Claims Tribunal / Principal District Court, Perambalur.

For appellants : Mr.S.Kamadevan

For respondents : Mr.P.Sankaranarayanan - R2



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JUDGMENT

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In a road accident that took place on 12.10.2015, a 23 year old Boopathy died while he was on the wheels of a car bearing Registration No.TN46 H 1786. According to the appellants / claimants, the accident had happened when the victim of the accident tried to avoid a dog on the way. Seeking compensation, the parents and sisters of the victim had approached the Tribunal with M.C.O.P.No.208 of 2016, but the Tribunal vide its order dated 23.11.2021 dismissed the claim petition on the ground that the victim was a tortfeasor and that he is not entitled to any compensation. This is now under challenge.

2.Heard both sides.

3.It is not in dispute that the victim might have been the tortfeasor, and as law stands today, the claimants possibly may be entitled to Rs.5,00,000/- under Section 164 of the Motor Vehicles Act, 1988. The learned counsel for the appellants however, submitted that the victim was a driver of the vehicle when the accident took place. This fact was refuted by the learned counsel



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for the respondent / Insurance Company. According to which, the victim was a post graduate student at the relevant time.

4.If the victim was actually a driver, which is a possibility even if he were a post graduate student at the relevant time, yet, whether he was in actual employment at the relevant time may make a critical difference. If he was on the wheels but not under an employment of the 1st respondent, the claimants may be benefited under Section 164 of the Act, but if he is the employee of the 1st respondent, certain additional benefits may flow for the claimants under the Employees Compensation Act, 1923.

5.The critical issue is whether the victim was a driver of the aforesaid vehicle under the employment of the 1st respondent?. The evidence on record is not adequate enough to come to a conclusive finding on this issue. Since the legislation is a beneficial legislation, this Court deems it appropriate to grant an opportunity to the claimants to establish the same.

6. In fine, this appeal stands allowed. The order of the Tribunal dated



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N.SESHASAYEE, J.

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23.11.2021 in M.C.O.P.No. 208 of 2016 is hereby set aside. The matter is remitted back to the Tribunal for entering a finding on the question herein raised. Once a finding on this is entertained, the Tribunal is required to apply the law on the facts so found by it and dispose of the matter within a period of three (3) months from the date of receipt of a copy of this order.

No costs.

13.12.2023

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Index : Yes / No
Neutral Citation

To.

The Motor Accidents Claims Tribunal
/ Principal District Court
Perambalur.

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