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C.M.A.No.2399 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.03.2023

CORAM :

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

and

THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI

C.M.A.No.2399 of 2021

1.Bhuvaneswari
2.Bharathkumar

... Appellants

VS

1.Karthikeyan
2.The New India Assurance Co. Ltd.,
Salem.

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the order dated 18.02.2021 made in M.C.O.P.No.2138 of 2019 on the file of the Motor Accidents Claims Tribunal / Special District Court, Salem.

For Appellants : Mr.M.Lokesh

For Respondents

For R1 : Mr.Ali Hasan Khan

For R2 : Mr.M.Krishnamoorthy



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J U D G M E N T

(Judgment of the Court was delivered by D.Krishnakumar, J.)

The Civil Miscellaneous Appeal has been filed to set aside the Award and Decree made in M.C.O.P.No.2138 of 2019, dated 18.02.2021 on the file of the Motor Accident Claims Tribunal / Special District Court, Salem, and also for enhancement of compensation.

2. Brief facts of the case:-

On 15.10.2012, at about 10.00 p.m., the deceased Ganesan after having dharshan at Tirupathi was waiting at the bus stand in front of Jayashyam Talkies on the left side of the road. The offending vehicle bearing Registration No.TN-30-AA-7778 was coming on the same road in a rash and negligent manner hit on the deceased and the front left wheel of the bus ran over on the left leg of the deceased causing crush injuries. In spite of treatment at Tirupathi as well as Kurunji Hospital, Salem, the deceased succumbed to the injuries on 15.12.2012. The said accident occurred due to



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the rash and negligent driving of the driver of the bus. The TIW Tirupathi Police had registered a case in Crime No.133 of 2012 against the driver of the bus. The wife of the deceased and her son have filed the claim petition before the Tribunal in M.C.O.P.No.2138 of 2019, claiming compensation of Rs.20,00,000/-. Based on the available materials and evidences the Tribunal has awarded a sum of Rs.2,70,190/- as compensation. Challenging the same, the present appeal is filed.

3. The learned counsel for the appellants submitted that the liability is fixed as against the first respondent / owner of the vehicle for payment of compensation and if notice has been served to the first respondent / owner of the vehicle, he would have contended the case before the Tribunal.

4. The learned counsel for the 2nd respondent submitted that originally the said application was presented before the Tribunal and since the Tribunal has no jurisdiction and the same has been returned and presented before the Motor Accidents Claims Tribunal, Salem, and the same was numbered as M.C.O.P.No.2138 of 2019. After presenting M.C.O.P.No.2138



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of 2019, notice has been sent to the first respondent / owner of the vehicle, according to them, even though the 1st respondent has stated that no further opportunity was granted to the first respondent, the notice sent to the 1st respondent has been returned with an endorsement “left” but the first respondent was very well residing in the same place and he has also received the said notice in the instant appeal. Therefore, the acknowledgement as shown that “left”, cannot be construed for issuance of paper publication, effecting of service to the 1st respondent. Further, the Tribunal ought to have issued a fresh notice to the first respondent.

5. Heard the learned counsel on either side and perused the materials available on record.

6. Before going into merits of the appeal, it is represented by the learned counsel appearing for the appellants that the first respondent has not received any summons from the Tribunal in the above said M.C.O.P.No.2138 of 2019, hence, he could not appear before the Tribunal and an ex-parte award came to be passed by the Tribunal as against the 1st



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respondent / owner of the vehicle. As against the said order, he filed an application before the Tribunal to set aside the said ex-parte award. The learned counsel for the appellants would further submit that in such circumstances, the appeal may be remanded to the Tribunal to determine the compensation, after providing opportunity to the parties concerned.

7. At this stage, the learned counsel for the parties concerned submitted before this Court that the issue can be resolved only when the application filed by the first respondent in Diary No.1654 of 2020 is considered by the Tribunal. The learned counsel appearing for the appellants has stated that he has no objection for considering such application and the appellants / claimants may be given liberty to approach the Tribunal seeking further enhancement of compensation. Therefore, both the parties concerned agreed that the award passed by the Tribunal may be set aside and the matter be remanded to the Tribunal for fresh consideration.

8. Even though the appellants / claimants have raised grounds for enhancement of compensation, in view of remanding the matter for fresh



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consideration, we are of the view that it will not be proper to consider for enhancing the compensation by this Court at this stage.

9. In the light of the aforesaid submissions made by the parties concerned, particularly when the claimants have no objection for hearing the application filed by the first respondent before the Tribunal to set aside the ex-parte order, we are inclined to issue the following directions.

(i) The Tribunal is directed to number the application in Diary No.1654 of 2020, if it is otherwise in order. After numbering the aforesaid application, the learned counsel for the parties concerned undertakes to give no objection in allowing the said application. The Tribunal shall dispose of the application filed by the 1st respondent / owner of the vehicle seeking set aside the exparte order, within a period of four weeks from the date of receipt of a copy of this order.

(ii) The Tribunal is directed to take the M.C.O.P.No.2138 of 2019 on file and dispose of the same on merits, within a period of twelve weeks thereafter.

(iii) The impugned award passed by the Tribunal is hereby set aside and the matter is remanded to the Tribunal to consider afresh.



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10. It is made clear that the aforesaid directions would apply only if the said application is in order, otherwise, the award passed by the Tribunal shall be restored. In the event of taking the M.C.O.P on file, the appellants / claimants are at liberty to agitate the matter before the Tribunal for enhancement of compensation in accordance with law.

11. In view of the above, the civil miscellaneous appeal is allowed.

There shall be no order as to costs.

(D.K.K.J.)

(K.G.T.J.)

16.03.2023

Index : Yes/No

Neutral Citation : Yes/No

Speaking / Non- Speaking order
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D.KRISHNAKUMAR, J.

and

K.GOVINDARAJAN THILAKAVADI, J.

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To

Motor Accidents Claims Tribunal,
Special District Court,
Salem.

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