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C.M.A.No.2253 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.11.2023

CORAM :

THE HONOURABLE MR. JUSTICE **M. DHANDAPANI**

C.M.A.No.2253 of 2017

and

CMP.No.11964 of 2017

The Branch Manager,
The Oriental Insurance Co. Ltd.,
No.3-L, Siddhaveerappa Chetty Road,
Dharmapuri Town.

...Appellant

Vs.

1. Raja
2. Palani
3. Venkatesh
4. S.Zachariab

...Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgement and Decree dated 29.07.2015 made in MCOP.No.700 of 2013 on the file of the Motor Accidents Tribunal, Special District Court, Krishnagiri.

For Appellant : Mr.J.Chandran

For Respondents : No Appearance, for R1 to R4



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JUDGEMENT

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Aggrieved by the Judgement and Decree passed by the Motor Accidents Tribunal, Special District Court, Krishnagiri in MCOP.No.700 of 2013 dated 29.07.2015, the insurer has come up with this Appeal.

2. The case of the appellant is that, the respondents 1 to 3/ claimants filed a claim petition claiming compensation of Rs.8,00,000/- for the death of one Kannaiyyan, on the ground that, on 28.07.2011 at about 9.00 hours, when the deceased was walking on the road towards Bellarampalli on Krishnagiri Road, the tractor-trailor bearing Regn.No.TN-46-A-3818 belonging to the 4th respondent, insured with the appellant, driven by its driver in a rash and negligent manner, hit the deceased, as a result of which, the deceased sustained fatal injuries on head and other parts of his body and succumbed to the same. Before the Tribunal, on the side of the appellant R.W.1 was examined but no document was marked on the side of the appellant and the claimants examined two witnesses viz., P.W.1 to P.W.2 and marked 7 documents viz., Ex.P.1 to Ex.P.7. After adjudication, the Tribunal, vide impugned judgment awarded a sum of Rs.7,92,000/-. Aggrieved by the said order,



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the appellant had come up with this appeal seeking questioning the liability of the insurer.

3. Learned counsel for the appellant submitted that though the claimants claim to be the legal heirs of the deceased so as to claim compensation, however, no legal heir certificate has been produced to show that they are the legal heirs of the deceased. Further, it is submitted that no material has been placed to show that the deceased was the sole bread winner of the family and the loss of income has greatly affected the livelihood of the family. In the absence of any material, the order of the Tribunal directing payment of compensation, without the relationship being established is wholly erroneous and the same deserves to be set aside.

4. Though notice was served on the respondents and their names were printed in the cause list, however, none appeared on their behalf. Considering the period of pendency of the appeal, this Court is inclined to dispose of the same based on the material documents placed on record.



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5. The factum and manner of the accident is not disputed by the parties. Therefore, this Court is not entering into the said aspect. The main grievance of the appellant is as to the findings which have been rendered by the Tribunal for awarding compensation notwithstanding the fact that the relationship of the claimants with the deceased has not been proved.

6. A perusal of the order passed by the Tribunal reveals that while awarding compensation, the Tribunal has held the claimants to be the siblings of the deceased. However, no legal heir certificate has been filed by the claimants to show that they are related to the deceased. Further, there is no material to show that the claimants are dependants of the deceased and that the loss of income due to the death of the deceased had affected their lives. There is no documentary evidence produced by the claimants to show that the deceased contributed to the family of the claimants. It is evident from deposition of R.W.2, VAO of Bellarampalli village that the 1st wife of the deceased deserted him and the whereabouts of the 1st wife is not known and the 2nd wife predeceased the deceased. When the deceased had been married twice, the first wife having deserted



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him and no divorce is alleged to have been obtained and the second wife predeceased the deceased, without bringing the first wife, who is the legal heir of the deceased on record, no claim petition can be maintained against the appellant and in the said scenario, the no compensation can be awarded in favour of the claimants/brothers of the deceased.

7. For the reasons aforesaid, the award passed by the Tribunal is wholly erroneous and the same deserves to be set aside. Accordingly, this appeal is **allowed** by setting aside the order impugned herein. However, liberty is granted to the claimants to approach competent civil court to obtain necessary legal heir certificate and, thereafter, file fresh claim petition impleading the first wife of the deceased also as a party in the claim petition. The appellant is permitted to withdraw the amount, if any, deposited by the appellant to the credit of the claim petition. No costs. Consequently, the connected Miscellaneous petition is closed.

23.11.2023

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Index : Yes / No

Speaking order : Yes / No

NCC : Yes / No



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M.DHANDAPANI, J.

skt

To

- 1.The Motor Accidents Tribunal, Special District Court,
Krishnagiri.
- 2.The Section Officer, V.R.Section, High Court, Madras.

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