



C.M.A.(MD)No.880 of 2013

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Dated: 05.02.2024

CORAM:

THE HON'BLE MR.JUSTICE **P. DHANABAL**

C.M.A.(MD)No.880 of 2013
and
CMP(MD) No.11194 of 2019

Kamaraj

... Petitioner/Appellant

Vs.

1. Senthil Kumar
2. K.Gunasekaran
3. United India Insurance Co Ltd.,
Rep. by its Branch Manager,
No. 12-A, Kovail Road, P.L.A. Building
Karur

..Respondents/Respondents

Prayer : This Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 to set aside the order and decree dated 24.08.2005 passed in M.C.O.P.No.203 of 2003 on the file of the Motor Accident Claims Tribunal/Chief Judicial Magistrate, Karur

For Appellant : Mr.S.Gokulraj

For Respondents : Mr.A.S.Mathialagan

JUDGMENT

This Civil Miscellaneous Appeal has been filed as against the order passed in M.C.O.P.No.203 of 2003 on the file of the Motor Accident Claims Tribunal/Chief Judicial Magistrate, Karur, wherein



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the present appeal has filed petition for compensation before Tribunal and the same was declined by the Tribunal. As against the same, the present appeal has been filed.

2. For the sake of convenience and brevity, the parties hereinafter will be referred to as per their status/ranking in the Tribunal.

3. According to the petitioners, the first petitioner one Mariyayee while she was alive on 08.01.2003 at about 10.30 a.m., the accident was caused by the driver of the vehicle bearing Reg. No.TN-47-J-9894 who drove the vehicle in a rash and negligent manner and dashed against the deceased. Thereafter, the petitioner Mariyayee filed an application and during pendency of the petition, she died due to the accident and thereafter, the second petitioner was impleaded as proper and necessary party. The deceased Mariyayee was doing milk vending business and earning Rs.3000/- per month and she was about 65 years on the date of accident and thereby, claimed a sum of Rs.3,00,000/- towards compensation.

4. According to the respondents, the second petitioner is not a son of the first petitioner and he is not the dependant of the first



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petitioner deceased Mariyayee. The respondent denied the age, occupation, income of the deceased. The accident had not taken place due to the negligence on the part of the driver of the first respondent and the first respondent has to prove that the driver had valid license to drive the vehicle and hence, the above claim petition is liable to be dismissed.

5. In order to prove the case of the petitioner, they have examined P.W.1 to P.W.5 and marked documents Exps.P.1 to P.8. On the side of the respondents, no one was examined and no document was marked.

6. After hearing both sides and perusing the documents available on record, the Tribunal has dismissed the petition by holding that the second petitioner failed to prove that he is the son of the first petitioner. As against the order of the Tribunal, the present appeal has been filed by the petitioner on various grounds.

7. The learned counsel appearing for the appellant would contend that on the side of the appellant /petitioner, they have examined P.W.1 to P.W.5 and marked documents Exps.P.1 to P.8 and thereby, they proved that the second petitioner is the son of the



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deceased/first petitioner, but the Tribunal has failed to consider the evidence adduced on the side of the appellant/petitioner and there is no contra evidence adduced by the respondent. The Tribunal without considering the evidence of the appellant/ petitioner erroneously dismissed the petition and therefore, the order of the Tribunal is liable to be set aside. Further, the learned counsel appearing for the appellant fairly conceded that suit is filed by one Arimala and Murugesan in respect of Will involved in this case and the same is pending for adjudication. Since it is pending, an opportunity can be given to the petitioner to file petition after disposal of the civil suit in respect of the Will.

8. The learned counsel appearing for the first respondent would contend that already the appellant /petitioner had not produced any document to show that he is the son of the deceased/first respondent and the Tribunal after taking into consideration all the aspects, dismissed the petition by holding that the appellant /petitioner failed to prove that he is the son of the deceased. Therefore, the order passed by the Tribunal is in order and thereby, the present appeal is liable to be dismissed.



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9. This Court after hearing both sides and upon perusing the documents including the order of the Tribunal, frames the following point for determination in this appeal:

i) Whether the appeal is liable to be allowed or not?

10. In this case, there is no dispute in respect of the accident and the involvement of the vehicle. There is no dispute that the first respondent vehicle was insured with the second respondent and the injured also died due to the accident. The relationship between the parties only denied by the respondent and the trial Court after analyzing the evidence dismissed the petition by holding that the appellant /petitioner failed to prove that he is the son of the deceased/first petitioner. The main contention of the appellant/second petitioner is that he is the son of the deceased and he mainly relied upon the Will dated 06.12.2002. In order to prove the said Will, he has examined P.W.1 to P.W. 5. However, it is admitted that the said Will in respect of the above matter is pending before the District Munsif Court, Karur in O.S.No.223 of 2005 for adjudication. Therefore, at this stage, as rightly contended by the learned counsel for the appellant, it is appropriate to dismiss the



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appeal, since the Will is under challenge before the appropriate Civil Court. Though witnesses have been examined, the Tribunal is not the competent civil Court to test the genuineness of the Will and thereby, the appellant/petitioner is at liberty to file a fresh petition in accordance with law after disposal of the civil suit in respect of the disputed Will.

11. With the above direction, this Civil Miscellaneous Appeal stands disposed of. No costs. Consequently connected miscellaneous petition is closed.

05.02.2024

NCC : Yes/No
Index : Yes/No
Internet: Yes/No
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To:

1. The Motor Accident Claims Tribunal
Chief Judicial Magistrate, Karur
2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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P. DHANABAL, J.

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