



C.M.A.(MD).No.332 of 2014

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 27.11.2023

PRONOUNCED ON : 05.01.2024

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

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1.Ramasamy
2.Kalaimani
3.Amirthavalli
4.Rajaletchumi
5.Rajeswari

... Appellants

Vs.

The Managing Director,
Tamil Nadu State Transport Corporation,
Thirumayam Road,
Pudukkottai District.

... Respondent

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the fair and decretal order dated 20.03.2013 rendered in M.C.O.P.No.406 of 2012 on the file of the learned Motor Accidents Claims Tribunal (Additional District Court), Pudukkottai.



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For A1 : Ms.K.Mahalakshmi
For A2 to A4 : Mr.S.J.Muthiah
For Respondent : Mr.A.V.B.Krishnakanthi

JUDGMENT

This Civil Miscellaneous Appeal is directed as against the judgment and award passed by the learned Motor Accident Claims Tribunal (Additional District Judge), at Pudukkottai in M.C.O.P.No.406 of 2012 dated 20.03.2013 seeking to set aside the judgment passed by the learned Tribunal.

2.For the sake of convenience, the parties are addressed herein as per the rank in M.C.O.P.No.406 of 2012.

3.The brief facts leading to the filing of the Civil Miscellaneous Appeal is as follows:-

The petitioners 1 and 2 are the parents of the deceased namely Ramesh and the petitioners 3 to 5 are the sisters of the deceased. The deceased Ramesh was aged 21 years and was working as Centering worker. On 21.07.2010 at about 08.15 p.m., when the deceased Ramesh



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was riding the motor cycle bearing registration No.TN-55-J-6111 along the Alangudi to Melakottai road near Melakottai Arch, a bus bearing registration No.TN-55-N-0162 dashed against the motorcycle. As the result of which, the deceased sustained grievous injuries and he died. Following which, he was taken to Alangudi Government Hospital and from where he was taken to Pudukottai Headquarters Hospital and then he was admitted at Geethanjali hospital as in patient on 22.07.2010. Thereafter, he died on 23.07.2010 at about 05.45 p.m. Claiming compensation of Rs.15,00,000/- under Section 166 of Motor Vehicles Act, the petitioners have filed M.C.O.P.No.406 of 2012.

4.The sole respondent is the Managing Director of Tamil Nadu State Transport Corporation. The respondent has filed a counter dated 20.06.2011 before the learned Tribunal refuting all the allegation set out in claim petition and categorically stated that only the legal heirs are entitled for claiming compensation. The petitioners 3 to 5 are only sisters to the unmarried deceased person and they cannot be considered as dependants of the deceased, since they were already married. That apart it is further submitted that the petitioners failed to implead the owner and



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the insurer of the two wheeler involved in the accident bearing registration No.TN-55-J-6111 and that apart the deceased person consumed alcohol while driving and a criminal case which was registered against the driver of the respondent was closed as 'mistake of fact' after proper investigation by the jurisdictional police.

5.Three witnesses on the side of the petitioners P.W.1 to P.W.3 were examined and Ex.P1 to Ex.P10 were marked and R.W.1 and R.W.2 were examined and Ex.R1 was marked on the side of the respondent. The learned Tribunal had framed three issues and on examining the deposition of the evidences adduced by both the witnesses on both the sides and documentary evidence placed before it and after considering the arguments putforth by both the parties came to a conclusion that the accident happened only due to the rash and negligent driving of the deceased Ramesh who actually drove the two wheeler and caused the accident and ultimately held that the tort feisor himself cannot claim compensation and on that basis, the learned Tribunal dismissed the M.C.O.P.No.406 of 2012.



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6.Challenging the same, this Civil Miscellaneous Appeal has been filed by the appellants/petitioners/claimants.

7.In the instant case, the deceased person was driving a two wheeler bearing registration No.TN-55-J-6111 on 21.07.2010 along the Alangudi to Melakottai road and at the time of driving, he was under the influence of alcohol. Though it is the case of the petitioners that the bus bearing registration No.TN-55-N-0162 belonging to the respondent dashed against the motorcycle and caused the accident, on a critical perusal of the materials available on record, the truth transpires in a different way. A case was registered in Crime No.288 of 2010 on the file of Alangudi police station and the same was investigated and the Investigating Officer had submitted a final report and the same was marked as Ex.R1, which would reveal that in the said final report, the case as against the driver of the Transport Corporation has been closed as 'mistake of fact'. As per said report, it is only the deceased who rode the motorcycle and dashed against the stopped bus and caused the accident himself. He is alone responsible for the accident.



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8.The driver of the respondent Corporation was examined as R.W. 2, who deposed in his evidence that, on 21.07.2010 when he was driving the bus from Alangudi to Melakottai, while the bus was stopped for unloading and loading passengers at Melakottai bus stop, the deceased came under the influence of alcohol in his motorcycle and dashed against the back side of the bus and as a result of which, he fell down and sustained injuries himself. The case is not actually that the bus dashed against the motorcycle.

9.That apart a perusal of Ex.P6, the accident register would reveal that the deceased only rode the two wheeler and dashed against the backside of the bus. Further the accident register, Ex.P6 also reveals that the breath of the deceased had the smell of alcohol. The deceased himself is a tort feaser who is under the influence of alcohol. The learned Tribunal came to a conclusion that the respondent is not liable to pay any compensation and hence, without dwelling into question of quantum of compensation, the learned Tribunal held that the petitioners were not entitled to any compensation.



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10. Under Section 163 of the Motor Vehicles Act, the owner cannot be both the claimant and recipient. Merely own use of motorcycle by the owner/borrower/permissive user does not entitle such persons to maintain Section 163A petition as the same is against the insurer of own/borrowed vehicle. The owner/borrower/permissive user are not third parties in relation to their own/borrowed vehicles and hence, not covered by the statutory insurance under Section 147. Hence, the owner/borrower/permissive user would be limited to personal accidental coverage if any strictly as per contract of insurance covering the borrowed vehicle.

11. However in the instant case, the deceased driver of the two wheeler involved in the accident himself was responsible for the accident which happened on 21.07.2010 due to his rash and negligent driving and he had himself driven the motorcycle recklessly under the influence of alcohol and has dashed behind the bus bearing registration No.TN-55-N-0162. Fully sticking to the decision of the learned Tribunal that the tortfeasor is not entitled for any compensation, I am not inclined to interfere



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L.VICTORIA GOWRI, J.

Mrn

with the order passed by the learned Tribunal.

12. Accordingly, the Civil Miscellaneous Appeal stands dismissed.

There shall be no order as to costs.

05.01.2024

NCC : Yes / No

Index : Yes / No

Internet : Yes

Mrn

To

1. The Motor Accidents Claims Tribunal,
(Additional District Judge), Pudukkottai.

2. The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court, Madurai.

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