



C.M.A(MD)No.1151 of 2018

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.06.2024

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.1151 of 2018
and
C.M.P(MD)No.11843 of 2018

Velraj ... Appellant/2nd Respondent

Vs.

1.Sheeba

2.Minor.Anushwara

3.Minor.Atchara
(R2 & R3 are represented by R1/mother)

4.Subbaiyan (Died) ... Respondents/Petitioners

5.Vinukumar ... Respondent/1st Respondent

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act 1988, to set aside the award and decree, dated 02.03.2018 made in M.C.O.P.No.37 of 2011 on the file of Motor Accidents Claims Tribunal (Sub Court), Kuzhithurai.

For Appellant : Mr.B.Vijayakarthiskeyan

For R1-R3 : Mr.A.Robinson

For R5 : No Appearance



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JUDGMENT

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The present appeal has been filed by the 2nd respondent in M.C.O.P.No.37 of 2011 on the file of Motor Accident Claims Tribunal / Sub Court, Kuzhithurai challenging the award on the ground of non-involvement of the vehicle and quantum.

2. According to the claimants, the deceased was travelling as a pillion rider in a two wheeler owned by the 2nd respondent and driven by the 1st respondent. Due to the rash and negligent driving on the part of the 1st respondent in the claim petition, the vehicle got dashed against the tree and in the said accident, the deceased has sustained injuries and he passed away. According to the claimants, the deceased was aged 32 years and a painter, earning a sum of Rs.12,000/- per month. Hence, the claimants have prayed for a compensation of Rs.20,00,000/-.

3. The driver of the vehicle had filed a counter contending that the accident has not taken place due to his negligence, but only due to the negligence on the part of the deceased person who was a pillion rider. The owner of the vehicle / appellant in the appeal has filed the present appeal contending that the vehicle is not at all involved in the said



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accident that is said to have taken place on 15.07.2010. He had also questioned the manner of accident and the quantum of compensation as prayed for by the claimants.

4. The tribunal after considering the oral and documentary evidence has arrived at a finding that the appellant vehicle was involved in the accident and the accident has taken place only due to the rash and negligent driving on the part of the 1st respondent in the claim petition. The tribunal has proceeded to fix the notional income at Rs.6,000/- per month and has ultimately arrived at a compensation of Rs.15,03,200/-. This award is under challenge in the present appeal.

5. According to the appellant, who is the owner of the vehicle, the vehicle was not at all involved in the accident and the said fact has not been properly appreciated by the tribunal. He further contended that the Motor Vehicle Inspector's report which is marked as Exhibit P.2 will clearly indicate that there is very less damage to the vehicle and therefore, the deceased would have been negligent in being seated as a pillion rider. He further questioned the quantum of notional income fixed by the tribunal and ultimately the total compensation amount.



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6. Per contra, the learned counsel appearing for the respondents contended that the claimants have established the involvement of the vehicle and the rash and negligence on the part of the 1st respondent in the claim petition. The tribunal has fixed a sum of Rs.6,000/- as notional income which is reasonable for an accident that has taken place in the year 2010. Hence, he prayed for confirming the award passed by the tribunal.

7. I have carefully considered the submissions made on either side and perused the material records.

8. The primary contention of the learned counsel appearing for the appellant is that his vehicle was not at all involved in any accident. The accident is said to have taken place at 3.30 p.m on 15.07.2010. An F.I.R has been registered by the brother of the deceased on the same day at 09.30 p.m as against the rider of the two wheeler. The vehicle has been subjected to inspection by the Motor Vehicle Inspector on 21.07.2010. Therefore, it is clear that the owner of the vehicle would have had knowledge about the involvement of the vehicle atleast on 21.07.2010. The claim petition has been filed on 05.03.2011 and numbered on



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19.04.2011. From 21.07.2010, the owner of the two wheeler has not lodged any complaint or raised any objection to the effect that his vehicle was not involved in the accident. Only when he received notice in the claim petition, such an objection has been raised in the counter affidavit. If really the vehicle was not involved and it was wantonly implicated in the said accident, immediately after receiving notice from the police officials for production of his vehicle, he would have raised objection. Therefore, the contention of the learned counsel appearing for the appellant that the said vehicle was not at all involved in the said accident, is not legally sustainable.

9. As far as the contention that only a minor damage has happened to the motor vehicle is concerned, the vehicle is said to have dashed as against the tree in the said accident. Due to the said impact, the rider has lost his balance and therefore, the pillion rider has fallen down and sustained injuries. Therefore, minor damage to the vehicle cannot be a consideration for arriving at a finding that the vehicle was not at all involved in the accident or the pillion rider was negligent in not properly seating himself in the vehicle.



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10. As far as the contention with regard to the quantum of compensation is concerned, the accident has taken place on 15.07.2010 and the notional income fixed by the tribunal as Rs.6,000/- is reasonable and the compensation awarded under the other heads are not on the higher side. Therefore, this Court does not find any merits in the appeal.

11. The learned counsel for the respondents 1 to 4 has filed a memo to the effect that the father of the deceased who has been arrayed as 4th respondent, has passed away. The said memo is recorded. The first claimant shall be entitled to withdraw Rs.8,00,000/- along with accrued interest. The balance amount shall be shared by the 2nd and 3rd claimants along with accrued interest.

12. With the above said observations, this Civil Miscellaneous Appeal stands dismissed. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

20.06.2024

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

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To

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1.The Motor Accidents Claims Tribunal
(Sub Court
Kuzhithurai.

2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR,J.

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Order made in
C.M.A(MD)No.1151 of 2018

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