



C.M.A.No.2208 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 10.02.2023

PRONOUNCED ON : 07.03.2023

CORAM:

THE HONOURABLE Mrs. JUSTICE R.KALAIMATHI

C.M.A.No.2208 of 2014

1.Tmt.Ananthai

2.Sudha

3.Suresh

4.Muniyamma

... Appellants

vs.

1.V.Kumar

2.National Insurance Company Limited,

Motor Third Party Cell Hub,

No.751, Anna Salai,

Chennai-600 002.

... Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, against the Judgment and Decree dated 26.08.2013 and made in M.A.C.T.O.P.No.3244 of 2010 on the file of the Motor Accident Claims Tribunal, VI Judge, Small Causes Court, Chennai.

For Appellants : Mrs.A.Subadra for M/s.M.Malar

For Respondents : M/s.N.B.Surekha [R2]

JUDGMENT



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The claimants No.1 to 4 in M.C.O.P.No.3244 of 2010 on the file of 6th Court of Small Causes, Chennai have filed the present appeal against the order of dismissal.

2. The learned counsel for the appellants urged this Court stating that it was an accident, the witnesses who were examined on the claimants side have spoken about the accident and reasonable compensation to be awarded for the loss of life of deceased Selvaraj, who died on account of the accident.

3. Per contra, the learned counsel for the 2nd respondent / Insurance Company vehemently argued that this is not a case arising out of a Motor Vehicles Act, but arising out of an incident which occurred due to consumption of alcohol. The First Information Report registered by the Ashok Nagar Police Station, was subsequently transferred to J3 Guindy Traffic Investigation Department. J3 Guindy Police registered a case in F.I.R.No.291/S2/06dated 28.06.2006 under Sections 279 and 337 of IPC. The wife of the deceased namely the 1st claimant herein was examined by the Police has given entirely different version. The medical records namely Discharge Summary reads that the deceased was under the influence of alcohol at the time of admission. It was reiterated by the learned counsel



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for the 2nd respondent that the incident was not due to the negligence of the driver of the Auto bearing Registration No.TN-09-AD-8447. For the above said reasons, this appeal is liable to be dismissed.

4. On the side of claimants, Ananthai W/o. deceased has been examined as PW1. Independent witnesses Geetha Lakshmi and Jeeva were examined as PW2 and PW3 who are said to have witnessed the accident and Exs.P1 to P9 have been marked. On the side of the respondents, one Kala who was the then Assistant Director of Forensic Department was examined as RW1 through whom viscera report of the deceased was marked as Ex.R7 and S.Ilango, who is the then Sub-Inspector of Traffic investigation has examined as RW2 and S.Natarajan Senior Assistant of the 2nd respondent/Insurance Company was examined as RW3.

5. The Tribunal having gone through the records has dismissed the claim petition stating that the occurrence is only an incident and not a road traffic accident. On perusal of oral and documentary evidence, though PW2 Geethalakshmi and one PW3 Jeeva have spoken about the accident, the clinching evidence is Accident Register which is marked as Ex.R5. It is pertinent to note that this was filed by the Insurance Company and not by



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the claimants. It cannot be denied that the accident Register is the earliest document to give a clear picture about the accident as to how the particular person sustained injuries. On perusal of Ex.R5 copy of the Accident Register, it reveals the fact that on 24.06.2006, at about 11.50 a.m., the deceased Selvaraj was taken to hospital by his wife Ananthai and the history of the case is stated to be fall, due to alcohol influence at 10.45 p.m., on 24.06.2006 whereas the First Information Report was registered only on 27.06.2006 and it was transferred to J3 Guindy Traffic Investigation Department. On 28.06.2006, the First Information Report came to be registered at Guindy Police registered the case vide F.I.R.No.291/S2/06. The Viscera Report which is marked as Ex.R1 would undoubtedly indicate the fact that the deceased was under the influence of alcohol at the time of death. Ex.R2-First Information Report was registered at the behest of the 1st claimant namely, Ananthai, the spouse of the deceased, she has stated that her husband was not in a position to talk, she has given the statement as follows:

"எனது கணவர் பேச முடியாத நிலை இருப்பதால் மருத்துவமனையில் வைத்து கொடுத்த வாக்குமூலம் பின்வருமாறு

ஐயா, நான் மேற்கண்ட விலாசத்தில் எனது குடும்பத்தோடு குடியிருந்து வருகிறேன். என்னுடைய கணவர் பெயிண்டர் வேலை செய்து வருகிறார். அவருக்கு குடிப்பழக்கம் உண்டு. எங்களுக்கு ஒரு மகனும் ஒரு மகளும் உள்ளனர். நேற்று 26/06/2006 ஆம் தேதி இரவு சுமார் 10.15 மணியளவில் எனது வீட்டிற்கு அருகில்



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பிருந்தாவனம் தெருவில் எனது கணவர் தலையில் அடிபட்டு ரோட்டில் விழுந்து கிடந்ததை கேள்விப்பட்டு உடனே நான் ஓடிச்சென்று என் கணவரை பார்த்து உடனே ஒரு ஆட்டோவில் ஏற்றி G.H / ல் சிகிச்சை சேர்த்தேன். முதலில் என் கணவர் குடிபோதையில் கீழே விழுந்து இருக்கலாம் என்று எண்ணி ஆஸ்பத்திரியில் சொல்லி சேர்த்தேன். ஆனால் எனக்கு இன்று TN 09 AD 8447 என்ற எண்ணுள்ள ஆட்டோ கணவர் ரோட்டில் நடந்து சென்றபோது அதிவேகமாக வந்து மோதி சென்று விட்டதாக பின்னர் தெரிய வந்தது."

6. Heard the learned counsel for the appellants and the learned counsel for the 2nd respondent/Insurance Company and perused the materials on record.

7. The Investigation Officer has filed final report Ex.R13 as mistake of fact and referred the case. PW2 Geetha Lakshmi and PW3 Jeeva have filed proof affidavit to the effect that on 26.06.2006 at about 10.50 p.m., while she (PW2) along with one Jeeva were travelling in an Auto bearing Reg.No.TN-09-AD-8447 and when they were returning back from Sri Devi Nursing Home to Brindavan Street at the point of Thambiah Road, in front of Krishna Tea Stall, their Auto driver drove the vehicle at high speed and in a rash and negligent manner hit the deceased who was walking along the road and they admitted him at SRM Hospital, due to rash and negligent driving of the driver of the auto, the accident had occurred. Not being



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satisfied with the evidence of PW2 and PW3 and relying upon the evidence of the respondents side coupled with the Exs.R5 to R7 along with records, the Tribunal has come to the conclusion that the deceased Selvaraj died of fall due to consumption of alcohol and not due to the road accident. The viscera report of Forensic Department reveals that the deceased was in drunken condition at the time of occurrence.

8. The Tribunal has considered in detail the oral evidence of PW2, PW3 and RW1, coupled with Exs.P1 to P9, Exs.R1 to R15 and has come to a reasonable conclusion that the said occurrence is indeed a mere occurrence and not an accident. Hence, the findings of the Tribunal cannot be found fault with. Therefore, I see no reason to interfere with the order of the Tribunal.

9. In the result, this Civil Miscellaneous Appeal is dismissed and the Judgment and Decree dated 26.08.2013 passed in M.A.C.T.O.P.No.3244 of 2010 on the file of the Motor Accident Claims Tribunal, VI Judge, Small Causes Court, Chennai is confirmed. No costs.

07.03.2023

Index : Yes/No



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Speaking / Non-speaking order

ssn

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To:

1. The Motor Accident Claims Tribunal,
VI Judge, Small Causes Court,
Chennai.
2. The Section Officer,
V.R.Section,
High Court of Madras,
Chennai.

R.KALAIMATHI, J.,

ssn



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Pre-delivery Judgment in
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