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Civil Miscellaneous Appeal No.1191 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.07.2024

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Civil Miscellaneous Appeal No.1191 of 2023

1.K.Sundaram
W/o.Kayampoli

2.C.Kayampoli (died)
S/o.Chellaiyah

3.K.Ayyara
S/o.Kayampoli

... Appellants

[2nd Appellant died. Appellants 1 & 3, (who are already on record) are recorded as LR's of the deceased 2nd appellant C.Kayampoli as per memo dated 24.06.2024 and vide court order dated 02.07.2024 made in C.M.A.No.1191 of 2023]

Vs.

1.P.Parthiban
S/o.Parasuraman

2.National Insurance Company Ltd.,
Motor Third Party Claims Hub,
3rd Floor, Rajina Manson,
No.46, Moore Street,
Chennai - 600 001.

... Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 21.09.2022 made in M.C.O.P.No.6612 of 2016 on the file of Motor Accident Claims Tribunal, II Judge, Court of Small Causes, Chennai.



Civil Miscellaneous Appeal No.1191 of 2023

For Appellants : Mr.K.Varadhakamaraj

For Respondents : Mr.J.Vijayaraghavan [R2]

JUDGMENT

The claimants, who were the parents and brother of the deceased Malailinga Raja, filed the claim petition on the ground that the deceased was travelling in a two wheeler, which was ridden by the first respondent on 04.08.2016 from Kelambakkam to Vandalur and at about 22.15 hours, when the two wheeler reached Nallambakkam Koot road, the rider of the two wheeler drove the vehicle in a rash and negligent manner and dashed on an unknown car. The deceased was thrown out of the vehicle and he sustained grievous head injuries and died on the spot. It is under these circumstances, the claim petition came to be filed before the Tribunal seeking compensation.

2. The Tribunal, after considering the facts and circumstances of the case and on appreciation of oral and documentary evidence, came to the conclusion that the accident had taken place only due to the rash and negligent driving on the part of the driver of the unknown vehicle, which



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was a car. In view of the same, the claim that was made as against the owner of the two wheeler came to be rejected.

3. The claimants, aggrieved by the award passed by the Motor Accident Claims Tribunal, II Judge, Court of Small Causes, Chennai, dated 21.09.2022 in M.C.O.P.No.6612 of 2016, have filed the present appeal before this Court.

4. Heard Mr.K.Varadhakamaraj, learned counsel for appellants/claimants and Mr.J.Vijayaraghavan, learned counsel for second respondent insurance company.

5. Learned counsel for appellants submitted that the Tribunal was swayed by the averments made in the First Information Report based on the information given by the first respondent, which was a self-serving statement. Learned counsel submitted that PW-2 was examined on the side of the claimants and he was the eye witness to the accident and he had categorically stated that the rider of the two wheeler in which the deceased was travelling as pillion rider, had driven the two wheeler in a



rash and negligent manner and caused the accident. In the light of this eye witness account, the Tribunal ought to have acted upon the same and hence, the award of the Tribunal dismissing the claim petition is liable to be interfered with by this Court. Learned counsel, in order to substantiate his submission, relied upon the judgment of the Apex Court in ***Pawan Kumar and another etc. v. Harkishan Dass Mohan Lal and others [2014 (1) TNMAC 321 (SC)]***.

6. *Per contra*, learned counsel for second respondent submitted that the earliest version that was available immediately after the accident was the complaint that was given by the first respondent before the police station wherein the entire negligence was attributed against the unknown car. Learned counsel submitted that this is a clear case of hit and run and since the unknown vehicle was unable to be traced, the claimants have come up with a completely different version and examined PW-2 whose evidence is unbelievable. Learned counsel, therefore, submitted that the Tribunal has properly appreciated the evidence and has rejected the claim petition, which does not warrant interference of this Court.



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7. This Court carefully considered the submissions made by learned counsel on either side and the materials available on record.

8. This Court also carefully went through the award passed by the Tribunal.

9. The accident had taken place on 04.08.2016. Admittedly, the deceased was travelling as a pillion rider in the two wheeler that was ridden by the first respondent. The accident had taken place at about 22.15 hours. The first respondent had given the complaint before the police station on 05.08.2016 at about 09.00 a.m. This is the earliest version that was given regarding the accident. The relevant portion in the First Information Report is extracted hereunder:

"நான் கேளம்பாக்கத்தில் உள்ள போர்ஸ் இந்தியா பார்மஸி கம்பெனியில் ஆப்ரேட்டராகப் பணியாற்றி வருகிறேன். என்னுடன் விருது நகர் மாவட்டத்தைச் சேர்ந்த மலைலிங்கராஜா வ/30 த/பெ காயம்புலி என்பவர் கூடுவாஞ்சேரி ஒரு வாடகை வீட்டில் தங்கி நான் வேலை செய்யும் கம்பெனியில் துப்பர்வைசராக வேலை செய்து வந்தார். நேற்று 04.08.2016ம் தேதி இரவு வேலை முடித்துவிட்டு என்னுடைய மோட்டார் சைக்கிள் பதிவு எண்.TN 85 6447 என்ற வாகனத்தை நான் ஓட்டிக் கொண்டு அதன் பின்புறம் மேற்சொன்ன மலைலிங்கராஜா என்பவரை உட்கார வைத்துக் கொண்டு கேளம்பாக்கம் to



வண்டலூர் சாலை மார்க்கத்தில் வந்து
கொண்டிருந்தபோது இரவு சுமார் 10.15 மணிக்கு
நல்லம்பாக்கம் கூட்ரோடு அருகில் வருகையில் அதே
திசையில் எங்களின் பின்புறம் வேகமாக வந்த ஒரு கார்
எங்கள் வாகனத்தில் மோதி நிற்காமல் சென்றுவிட்டது.
மோட்டார் சைக்கிளில் வந்த நாங்கள் இருவரும் நிலை
தடுமாறி கீழே விழுந்ததில் நிற்காமல் சென்றுவிட்ட
காரின் பதிவு எண்ணை பார்க்க முடியவில்லை. பின்னாடி
ஒரு நபர் மோட்டார் சைக்கிளில் வந்தவர் 108
ஆம்புலன்ஸ் வரவழைக்க அவர்கள் வந்து பார்த்து விட்டு
மலைலிங்கராஜாவைப் பரிசோதித்து அவர்
இறந்துபோய்விட்டதாக தெரிவித்தனர். அவரின் தரை
முகத்தில் பலத்தகாயம் ஏற்பட்டிருந்தது. இந்த விபத்தில்
என்னுடைய இடது கை தோள்பட்டை முழங்கையில்
காயம் ஏற்பட்டது. அங்கிருந்தவர்கள் மற்றொரு
ஆம்புலன்ஸை வரவழைத்து மலைலிங்கராஜாவின்
பிரேதத்தை குரோம்பேட்டை அரசு மருத்துவமனைக்கு
அனுப்பி வைத்தார்கள் நான் குரோம்பேட்டை பார்வதி
மருத்துமனையில் சிகிச்சைப் பெற்று இந்த விபத்து பற்றி
தக்க நடவடிக்கை எடுக்க தாழ்மையுடன்
கேட்டுக்கொள்கிறேன்."

10. The offending vehicle was not able to be identified. The claimants filed the claim petition on 22.09.2016 by raising a ground that the first respondent, who is the rider of the vehicle, had ridden the two wheeler in a rash and negligent manner and dashed on the unknown car and caused the accident. This version given by the claimants runs contra to the earliest version that was given immediately after the accident by the first respondent, which resulted in the registration of First Information Report in Crime No.436 of 2016.



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11. The claimants, in order to substantiate the above stand, examined PW-2, who is said to be working as a parotta master in a hotel. He states that on 04.08.2016 after completing his work, he was walking in the road from Kelambakkam to Vandalur and he saw the two wheeler ridden by the first respondent in which the deceased was travelling as a pillion rider. He further stated that the two wheeler was ridden in a rash and negligent manner and it dashed on the car and as a result, both the rider and the pillion rider fell down and the pillion rider died on the spot. During cross-examination, he has stated that he saw the accident from about 15 feet away from the place of occurrence and he saw the two wheeler trying to overtake the car and as a result, it dashed on the car and the accident had taken place. He also states that he has not spoken about this to the police and he has not given any complaint in this regard.

12. While undertaking the exercise of appreciation of evidence, the Evidence Act expects a Judge to deal with the same from the stand point view of a prudent man. The process of appreciation of evidence always involves common sense. The earliest version that is available is that of



the first respondent, who gave the complaint after the accident wherein the entire blame was put against the unknown car. If really there was negligence on the part of the first respondent, the first step that would have been taken by the claimants is to have given a complaint against the first respondent stating that he had ridden the two wheeler in a rash and negligent manner. If that had been done, obviously the statements of the witnesses would have been recorded by the police. If really PW-2 had seen the accident, he would have been called for in the course of investigation and his statement would have been recorded. In the case in hand, PW-2, all of a sudden, comes from nowhere and claims that he was an eye witness to the accident. On the face of it, it looks very unnatural and obviously, PW-2 has been planted as a witness in this case in order to support the version given by the claimants.

13. The version given in the First Information Report is that the car had hit the two wheeler from behind. The version given by PW-2 is that the two wheeler had dashed the car. There are now two contra versions. Curiously, the two wheeler in which the deceased was travelling has not been subjected to inspection by the Motor Vehicle Inspector in order to



identify the damage that has been caused to the two wheeler.

14. On a cumulative reading of the evidence available on record, it can be clearly seen that the unknown car was not able to be identified. In the mean time, the claimants wanted to claim for compensation in the accident. The easiest way to do it would be to put the blame on the rider of the two wheeler. The rider of the two wheeler, who is the first respondent, also safely keeps himself away from the Court and he does not contest the claim petition. Therefore, it is clear that the entire version of the claimants is totally unbelievable and the Tribunal has properly appreciated the evidence and reached such a conclusion, which does not warrant interference of this Court.

15. The judgment that was relied upon by learned counsel for appellant will not apply to the facts of the present case. A precedent can never help the Court while deciding the case on facts. A precedent can be relied upon only if it involves applying the ratio decidendi that was arrived at by the Apex Court in that judgment. A judgment cannot be relied upon where the Court is undertaking the exercise of deciding the case purely on merits based on the facts placed before the Court.



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Therefore, the precedent that was relied upon by learned counsel for

N.ANAND VENKATESH, J.

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appellants does not really help this Court in coming to a different conclusion. This Court does not find any merits in this case.

In the result, this Civil Miscellaneous Appeal is dismissed. Since the case in hand clearly comes with the purview of a hit and run case, it is always open to the claimants to seek for appropriate compensation in the manner known to law. No costs.

25.07.2024

Speaking Judgment/Non-speaking Judgment

Index :Yes/No

Neutral citation: Yes/No

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To
The Motor Accident Claims Tribunal,
II Court of Small Causes,
Chennai.

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