



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 06.10.2017

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM
and
THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A(MD)No.1361 of 2013

1.Sundararajulu (Died)
2.Mrs.Poongodi
3.Mrs.Sharmila
4.Mrs.Suganya
5.Sindhuja

(Appellants 2 to 5 brought on record as
the Lrs of deceased 1st appellant, vide
Court Order dated 22.02.2017)

... Appellants/
LRS of the Claimant

Vs.

1.P.Srinivasan

2.New India Assurance Co. Ltd.,
Rep. By its Divisional Manager,
Thanjavur, Thanjavur District.

...Respondents

PRAYER: Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act against the award, dated 26.02.2004 made in MCOP No.975 of 2001 on the file of the Motor Accident Claims Tribunal (Fast Track Court No.1), Thanjavur.

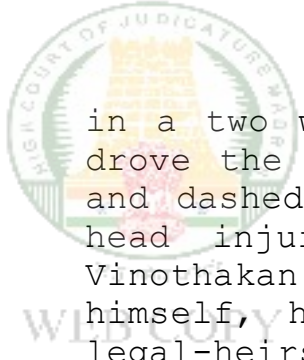
For Appellants	: Mr.A.Haja Mohideen
For 1 st Respondent	: No appearance
For 2 nd Respondent	: Mr.D.Sivaraman

J U D G M E N T

[Judgment of the Court was made by **K.KALYANASUNDARAM, J**]

The Motor Accident Claims Tribunal (Fast Track Court No.1), Thanjavur, dismissed the claim petition filed seeking compensation of Rs.15,00,000/- by the injured Sundarraajulu. Challenging the judgment and decree, the appellants are before this court.

2.The case of the claimant is that on 20.10.1995 at about 12.45 hours, when the deceased was travelling as a pillion rider



in a two wheeler, the rider of the mother cycle, Mohamed Rafeek drove the vehicle bearing Registration No.TAO-50 in a high speed and dashed against a Wall. In the impact, the deceased sustained head injuries and immediately, he was admitted in Thanjavur Vinothakan Hospital. The claim petition was filed by the injured himself, however, since during the pendency of the appeal, his legal-heirs were brought on record.

3.The claim was opposed by the respondents contending that the accident did not take place as alleged by the claimant and the vehicle was falsely implicated in this case. It is further stated that the offending vehicle bearing Registration No.TAO-50 had an Act policy and therefore, they are not liable to pay compensation.

4.Before the Tribunal, on the side of the claimant two witnesses were examined as PW1 and PW2 and marked Exs.P1 to P5. On the side of the respondents, four witnesses were examined as RW1 to RW4 and marked Exs.B1 to B4.

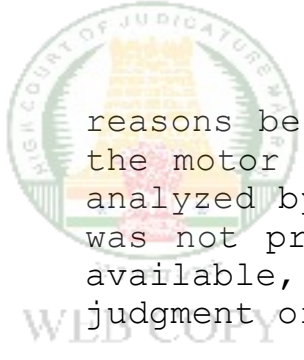
5.We have heard the learned counsels on either side and perused the materials available on record.

6.Admittedly, in this case for the accident that had taken place on 20.10.1995, the complaint was lodged only on 03.11.2001. According to the appellants, one Mohamed Rafeek was riding the two wheeler and the deceased was travelling as a pillion rider. Since, he sustained head injury and he was in Coma, he did not prefer any complaint to the police. However, on the side of the claimant, the said Mohamed Rafeek was not examined to prove the accident.

7.RW2, the Inspector of Police, attached to Thanjavur East Police Station has deposed that he received a complaint on 03.11.2001 and registered a case in Crime No.199 of 2001 under Sections 279 and 337 of IPC and after investigation, it was closed as 'Mistake of Fact' on 20.11.2001. RW3 corroborated the evidence of RW2.

8.The appellants mainly rely on the complaint given in the year 1999, which is marked as Ex.P1. A perusal of Ex.P1 would reveal that the deceased had given the complaint to the Inspector of Police, Crime Branch, Trichy alleging that on 26.01.2009, when he travelled in an Auto to purchase Medicines, he lost his medical records, but nothing has been mentioned about the injury sustained in the accident on 20.10.1995. R.W.4 Mr.Kannan, an official from the 2nd respondent/Insurance Company has categorically stated that the company did not receive any claim for the accident took place in the year 1995.

<https://hcservices.ecourt.gov.in/services/> 9.The facts narrated above would reveal that for the accident said to have taken place on 20.10.1995, a complaint was preferred on 20.11.2001 i.e., after a lapse of 6 years. The claimant for the



reasons best known to him, did not choose to examine the rider of the motor cycle. The evidence adduced by the parties was properly analyzed by the tribunal to come to a conclusion that the accident was not proved by the claimant. When there is no other materials available, we find it difficult to set aside the well considered judgment of the tribunal.

10. In the result, the Civil Miscellaneous Appeal fails and the same is **dismissed**. No costs.

Sd/-
Assistant Registrar (T&P)

/True Copy/

Sub Assistant Registrar

To,

1. The Motor Accident Claims Tribunal
(Fast Track Court No.1),
Thanjavur.

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

+ 1 cc TO Mr. A. Haja Mohideen, Advocate in SR No. 81867
+ 1 cc TO Mr. D. Sivaraman, Advocate in SR No. 81821

am
AE/SKN RSK/SAR1/27.12.2017/3P/5C

C.M.A (MD) No. 1361 of 2013
06.10.2017