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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 07.09.2018

DELIVERED ON : 20.09.2018

CORAM

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.2779 of 2008

1.Jagatha alias Jagathammal
2.Vaduvukkarasi
3.Dhanalakshmi

.. Appellants/Claimants

..Vs..

1.S.Gopinath
2.The National Insurance Co. Ltd.,
No.751, Anna Salai,
Chennai - 2

..Respondents/ Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the order and decree made in MCOP.No.441 of 2004 dated 20th day of July 2006 on the file of the Motor Accidents Claims Tribunal, Additional District Judge, Fast Track Court-V, Thiruvallur.

For Appellants : Mr.U.M.Ravichandran
For Respondent 2 : Mr.Srinivasan Ramalingam

J U D G M E N T

The instant appeal has been filed by the claimants challenging the dismissal of the claim made by the claimants before the Motor Accident Claims Tribunal (Additional District Court, Fast Track Court, Tiruvallur) in MCOP.No.441 of 2004 seeking a compensation of Rs.7,00,000/- for the death of Dhanapal.

The brief facts leading to the filing of the instant appeal are as follows:

2. One Dhanapal died on 19.01.2004, allegedly as a result of an accident caused by a vehicle bearing registration No.TN05-C-7014 owned by the first respondent and insured with the second respondent. The Appellants claiming to be the dependents of the deceased Dhanapal



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preferred a claim before the Motor Accident Claims Tribunal in MCOP.No.441 of 2004 against the respondents seeking a compensation of Rs.7,00,000/-. The Motor Accident Claims Tribunal by its Award dated 20.07.2006 passed in MCOP.No.441 of 2004, dismissed the claim of the Appellants on the ground that the Appellants have not established that the vehicle TN05-C-7014 insured with the second respondent and owned by the first respondent was involved in the accident which resulted in the death of Dhanapal.

3. Aggrieved by the Award dated 20.07.2006 passed in MCOP.No.441 of 2004, rejecting the claim of the Appellants, the instant appeal has been filed.

4. Heard, Mr.U.M.Ravichandran, learned counsel for the Appellants and Mr.Srinivasan Ramalingam, learned counsel for the second respondent, Insurance Company.

5. According to the learned counsel for the Appellants, the Tribunal has erroneously rejected the claim of the Appellants by not giving proper consideration of the charge sheet filed by the police against the first respondent, the owner of the vehicle, which according to him, will reveal the involvement of the vehicle insured with the second respondent insurance company in the accident. According to the learned counsel for the Appellants, the Tribunal ought to have awarded a sum of Rs.7,00,000/- together with interest at the rate of 12% per annum from the date of claim till the date of deposit and also costs in favour of the Appellants as claimed in their claim petition.

6. Per contra, the learned counsel for the second respondent insurance Company would submit that it has been the consistent stand of the second respondent that the subject vehicle was not involved in the accident. The learned counsel for the second respondent drew the attention of this Court to the deposition of the second respondent and the counter statement filed before the Tribunal. The learned counsel for the second respondent further contended that it can be inferred from the nature of injuries and the postmortem certificate which was marked as Ex.P2 before the Tribunal that no vehicle was involved in the accident. The injuries sustained by the deceased were grievous in nature and has caused damage to his brain, whereas the vehicle as seen from the MVI report and the rough sketch which were marked as Exs.P4 and P3 respectively revealed that only the left indicator light in the alleged vehicle was damaged. The learned counsel for the second respondent further contended that under the First Information Report, based on the complaint given by



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the Village Administrative Officer which was marked as Ex.P3, the details of the vehicle involved in the accident were not disclosed, but was mentioned as an unknown vehicle. According to the learned counsel for the second respondent, the charge sheet filed on 02.04.2004 which for the first time revealed the details of the vehicle involved in the accident.

7. This Court after having considered the materials available on record and after examining the impugned award and after hearing the submissions of the respective counsels, observes the following:

a) There are several contradictions in the evidence available before the Tribunal. In the First Information Report given by the Village Administrative Officer, Purusothaman which was marked as Ex.P1, the reason for the death of Dhanapal is not mentioned and the vehicle allegedly involved in the accident namely Hero Honda Splendor vehicle bearing registration No.TN05-C-7014 is also not mentioned. PW2 in his deposition has stated that on 19.01.2004, he went to Arakonam to purchase electrical items by a cycle and on the Nethaji Nagar Main Road, he found an aged person lying with injuries and did not know whether the aged person was alive or not. He has also deposed that he was not a witness to the accident, but he saw a Hero Honda Splendor vehicle near to the place where the deceased was lying. According to the Appellant, the said Hero Honda Splendor vehicle is the vehicle which caused the death. The First Information Report contradicts the deposition of PW2. The First Information Report does not reveal the involvement of the Hero Honda Splendor vehicle bearing registration No.TN05-C-7014 which resulted in the death of Dhanapal but only reveals that an unidentified person has died due to the road accident.

b) The alleged vehicle namely Hero Honda Splendor bearing registration No.TN05-C-7014 was identified as the vehicle involved in the accident only after four months. In the MVI report, there is no mention as to when the intimation was given. Moreover, in the report, there is no explanation as to how this vehicle was connected with the accident.

c) As seen from the MVI report, there is a damage only to the right indicator of the Hero Honda Splendor vehicle bearing registration No.TN05-C-7014, whereas the deceased Dhanapal has sustained grievous head injury with fracture of skull and crushing of brain as per the post mortem certificate which was marked as Ex.P2. The Tribunal has correctly given a finding that when the deceased is said to have died of grievous injuries on head with skull fracture and brain damage, it is not possible that the Hero Honda Splendor vehicle bearing registration No. TN05-C-7014



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would have suffered only a minor damage, that too, only of its indicator.

d) Even though the deceased died on 19.01.2004, the doctor was examined by the police only on 02.04.2004 and the charge sheet was also filed on the same date against the owner of the Hero Honda Splendor vehicle bearing registration No. TN05-C-7014 which was allegedly involved in the accident. Further the said vehicle was sent for inspection only on 25.04.2004 and the owner of the vehicle/first respondent has pleaded his guilt and paid the fine,

e) The sketch Ex.P3 submitted by the police shows the place where the body of the deceased was lying. The sketch does not reveal the presence of any vehicle and also does not reveal whether the accident was caused by any vehicle.

f) The Tribunal has followed the decisions of the Orissa High Court reported in AIR 1997 Orissa 197 and the Madras High Court reported in 2004 (2) TNMAC 101 in support of the proposition that the statement made in the First Information Report as well as the case diary is not a substantiative piece of evidence, but the case of the claimants will have to be established independently before the Claims Tribunal. In the case on hand, as observed earlier, there are several contradictions in the evidence placed by the Appellants before the Tribunal. Therefore, this Court is of the considered view that the Tribunal has rightly rejected the claim of the Appellant.

g) In a Motor Accident Claim under Section 166 of the Motor Vehicles Act, a tribunal *stricto sensu* is not bound by the pleadings of the parties; its function being to determine the amount of fair compensation in the event an accident has taken place by reason of negligence of the driver of a motor vehicle. The strict rule of pleading contained in the Code of Civil Procedure cannot be invoked while considering a claim petition under Section 166 of the Motor Vehicles Act. The petition is not a plaint. It does not provide for "prayer" in a separate column. Hence, there is no rational basis to apply the doctrine of variance between pleadings and proof. The Appellants cannot rely upon the pleadings made by the second respondent insurance company in its counter filed before the Tribunal made in Paragraph 6 wherein they have stated that the alleged accident happened only due to the negligence on the part of the deceased Dhanapal, when he suddenly crossed the road and without following the traffic rules and regulations and without noticing the two wheeler bearing registration No. TN05-C-7014 which was coming very slowly on the road. As observed earlier, in Motor Accident Claims under Section 166 of the Motor Vehicles Act, the evidence in support of the claim is given more weightage, even though it may contradict the pleadings.



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h) In the instant case, as observed earlier, there are several contradictions and the appellants have also failed to establish their case against the respondents on preponderance of probability. It is undoubtedly clear from the evidence available on record that the Hero Honda Splendor vehicle bearing registration No.TN05-C-7014 was not involved in the accident which allegedly resulted in the death of Dhanapal. Therefore in the considered view of this Court, the Tribunal has rightly rejected the claim of the Appellants.

8. In the light of the above observations, there is no merit in the instant appeal. Accordingly, the appeal is dismissed. No costs.

Sd/-

Assistant Registrar(CS vi)

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Sub Assistant Registrar

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To

1.The Motor Accidents Claims Tribunal,
Additional District Judge,
Fast Track Court-V, Thiruvallur

+lcc to Mr.V.M.RAVICHANDRAN , Advocate SR.No. 65660

+lcc to Mr.Srinivasan Ramalingam , Advocate SR.No. 65564

C.M.A.No.2779 of 2008

ASK(17/10/2018)