

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.07.2019

CORAM:

THE HON'BLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.4296 of 2005

1.Ranganathan
2.Krishnaveni

.... Appellants

Vs.

1.M.Thandavamurthy

2.The Divisional Manager,
M/s.National Insurance Co.Ltd.,
J.N.Street, Pondicherry.

3.Malarvizhi

.... Respondents

Prayer: Civil Miscellaneous Appeal filed under section 173 of Motor Vehicles Act, 1988 against the judgment and decree dated 15.02.2001 made in MCOP No.583 of 1997 on the file of the Additional Motor Accident Claims Tribunal (Special Officer Civil Judge) Pondicherry.

For Appellants : Mr.Dhanya kumar
For R-2 : M/s.R.Rathana Thara

J U D G M E N T

This appeal is directed against the judgment and decree made in MCOP No.583 of 1997, dated 15.02.2001 on the file of the Additional Motor Accident Claims Tribunal, Special Officer Civil Judge, Pondicherry.

2. According to the appellants/claimants, in an accident that took place on 19.04.1997, at about 8.00 hours, one Vijayan, who was a pillion rider in a motor cycle bearing Registration No.TSL.3169 driven by one Balakrishnan, succumbed to the injuries, for which, the appellants/claimants, who are the wife and parents of the deceased filed the claim petition, claiming a sum of Rs.5,00,000/- as compensation.

3. The Tribunal, after framing issues, recording the evidence and marking the documents, has dismissed the claim petition. Aggrieved over the dismissal of the claim petition, the parents have filed the Civil Miscellaneous Appeal.

4. Heard the learned counsel for the appellants/claimants as well as the learned counsel for the second respondent/Insurance Company.

5. The learned counsel for the appellants/claimants submitted that the Tribunal has not appreciated the documents on record in a proper perspective. He further submitted that the Tribunal failed to take into consideration the eye-witness/PW.2, who deposed that the vehicle in question was driven by the said Balakrishnan and Vijayan was only a pillion rider. Even otherwise, the respondents 1 and 2 are bound to pay compensation under no fault liability.

6. Per contra, the second respondent/Insurance Company submitted that the First Information Report and the other documents adduced by the appellants/claimants did not establish that the accident was due to rash and negligent driving of the rider of the motor cycle, due to which, the said Vijayan died. Further, the claimants have not proved that the said Vijayan was a pillion rider in the motorcycle, involved in the accident. Hence, the findings so recorded by the Tribunal are based on materials available on record and the same warrants no interference.

7. At the out set, it has to be pointed out that when the Tribunal has permitted the respective parties to adduce proper evidence, such an opportunity was not utilized by the appellants/claimants herein. The appellants/claimants stated in their claim petition that the person, who drove the vehicle, was one Veerappan. On the other hand, as per the First Information Report, eye-witness and other documents, the person, who drove the motorcycle, was one Balakrishnan. The version available in the First Information Report was against the claim made by the appellants/claimants. In such view of the matter, the Tribunal has dismissed the claim petition, observing that the appellants/claimants have no proof that the said Vijayan was a pillion rider, at the time of accident.

8. Added to the above, it is to be mentioned here that the appellants/claimants could have summoned the rider of the two-wheeler Balakrishnan and examined as witness, so as to illicit the truth, but they failed to do so. In the absence of any clinching evidence available on the side of the claimants, it cannot be held that the said Vijayan was the pillion rider of the motorcycle, involved in the accident. Further, the grounds raised by the appellants/claimants are baseless, since the same were answered by the Tribunal itself by way of detailed reasonings. Thus, the appellants/claimants have not proved their case in the manner known to law. As such, the Tribunal has rightly dismissed the claim petition.

9.Hence, this Civil Miscellaneous Appeal has to fail and it is dismissed. No costs.

Sd/-
Assistant Registrar(CS)

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Sub Assistant Registrar

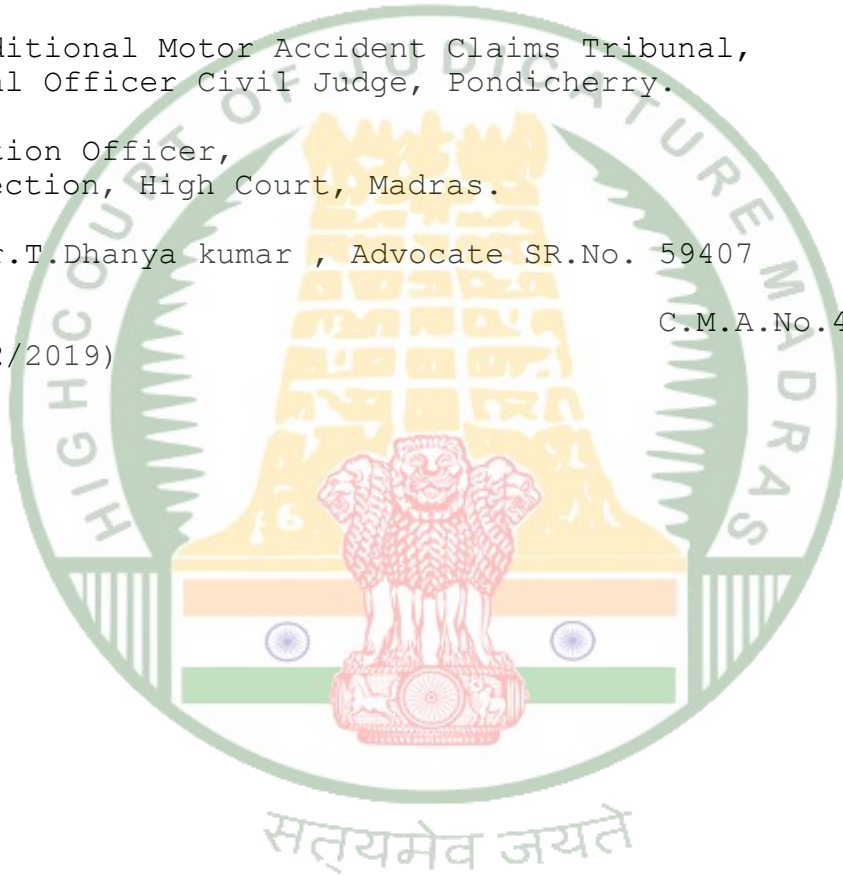
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To

1. The Additional Motor Accident Claims Tribunal,
Special Officer Civil Judge, Pondicherry.
- 2.The Section Officer,
V.R. Section, High Court, Madras.

+1cc to Mr.T.Dhanya kumar , Advocate SR.No. 59407

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A.SK(16/12/2019)



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