

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.08.2019

CORAM:

THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

C.M.A.No.2809 of 2019

1.Prema

Venkatesh (deceased)

2.Saraswathi ... Appellants/Petitioners

Vs.

1.J.A.Peter

2.Reliance General Insurance Company Ltd.,
Rep. by its Branch Manager,
Vellore District. ... Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 26.10.2018 made in M.C.O.P.No.12 of 2017 on the file of Motor Accident Claims Tribunal, Additional District Court (Fast Track Court), Arni.

For Appellants : Mr.P.Satheesh Kumar

For R2 : Mr.S.Arunkumar

J U D G M E N T
सत्यमेव जयते

The Civil Miscellaneous Appeal is filed by the appellants/claimants seeking enhancement of compensation granted by the Tribunal in the award dated 26.10.2018 made in M.C.O.P.No.12 of 2017 on the file of Motor Accident Claims Tribunal, Additional District Court (Fast Track Court), Arni.

2.The appellants are claimants in M.C.O.P.No.12 of 2017 on the file of Motor Accident Claims Tribunal, Additional District Court (Fast Track Court), Arni. The appellants filed the said claim petition claiming a sum of Rs.10,00,000/- as compensation for the death of one Mani, who died in the accident that took

place on 25.02.2010. Initially, pending claim petition, 2nd appellant/claimant died. The Tribunal, considering the pleadings, oral and documentary evidence, dismissed the claim petition holding that the appellants 1 & 2 have not proved that they are the legal heirs of the deceased. Against the said award dated 26.10.2018 made in M.C.O.P.No.12 of 2017, the appellants have come out with the present appeal, challenging the dismissal of the claim petition.

3. In the grounds of appeal the appellants have contended that the Tribunal has not appreciated the documentary and oral evidence adduced by the petitioners/appellants in proper perspective. The Tribunal failed to consider that the accident had occurred only due to rash and negligent driving by the driver of the 1st respondent's vehicle insured with the 2nd respondent nevertheless erred compensation. The Tribunal ought to have ignored the inconsistency in the evidence of PW2, especially when there is no dispute with regard to the accident and death of the victim. Further contended that, it was hit and run case, nevertheless erred in standing on technicalities. The Tribunal erred in dismissing the claim petition are unsustainable in law and prayed for allowing this appeal.

4. Per contra, the learned counsel appearing for the 2nd respondent/Insurance Company contended that the Tribunal after considering materials available on record, held that the appellants have not proved that they are the legal heirs of the deceased and rightly dismissed the claim petition and prayed for dismissal of the appeal.

5. Heard Mr.P.Satheesh Kumar, learned counsel appearing for the appellants and Mr.S.Arunkumar, learned counsel appearing for the 2nd respondent/Insurance Company and perused all the materials on record.

6. From the materials available on record, it is seen that the Tribunal after careful consideration of the following points both in the aspect of negligence and liability, has rendered the judgment:

- (a) Ex.P1/FIR shows no vehicle number with regard to the accident.
- (b) The rider of the two wheeler with whom the deceased was a pillion rider was not examined.
- (c) It is a case of hit and run and the complaint was given by one Mani, S/o. Govindaraj.
- (d) The deceased died whether on the date of accident itself.
- (e) As per Ex.P2/postmortem certificate, the deceased had died due to grievous injuries on the brain, lungs and heart.

On perusal of the above documents, it is clear that the claimants have not proved the mode of accident in a proper

perspective. The Tribunal has also rightly observed the said facts and dismissed the claim petition, added to the above the Tribunal has also observed that the claimants have not produced legal heirship certificate to prove their claim. The Tribunal has also observed that the claimants have not proved the accident by way of proper documentary evidence. Hence, the Tribunal has held that there is a doubt with regard to the manner of accident and the legal heirship of the claimants. In such way of matter, the Tribunal has dismissed the claim petition.

7.This Court is of the view that the Tribunal has rightly observed the negligence based on documents available on record. It is the duty of the claimants to produce the evidence before the Court. When the evidence is eschewed it cannot be contained at a later point of time that the Tribunal has not analyzed the evidence in proper perspective. The evidence i.e. legal heirship certificate as well as the documents to prove that the accident had happened only due to the rash and negligent driving of the Tata Indica Van are not produced likely all the claimants to say that the accident had not happened as alleged in the FIR. Hence, the finding on the negligence by the Tribunal are perfectly valid and does not require any interference by this Court.

8.In the result, this Civil Miscellaneous Appeal is dismissed. No costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

सत्यमेव जयते
Sub Assistant Registrar

mtl

To

WEB COPY

The Additional District Judge,
(Fast Track Court),
Motor Accident Claims Tribunal,
Arni.

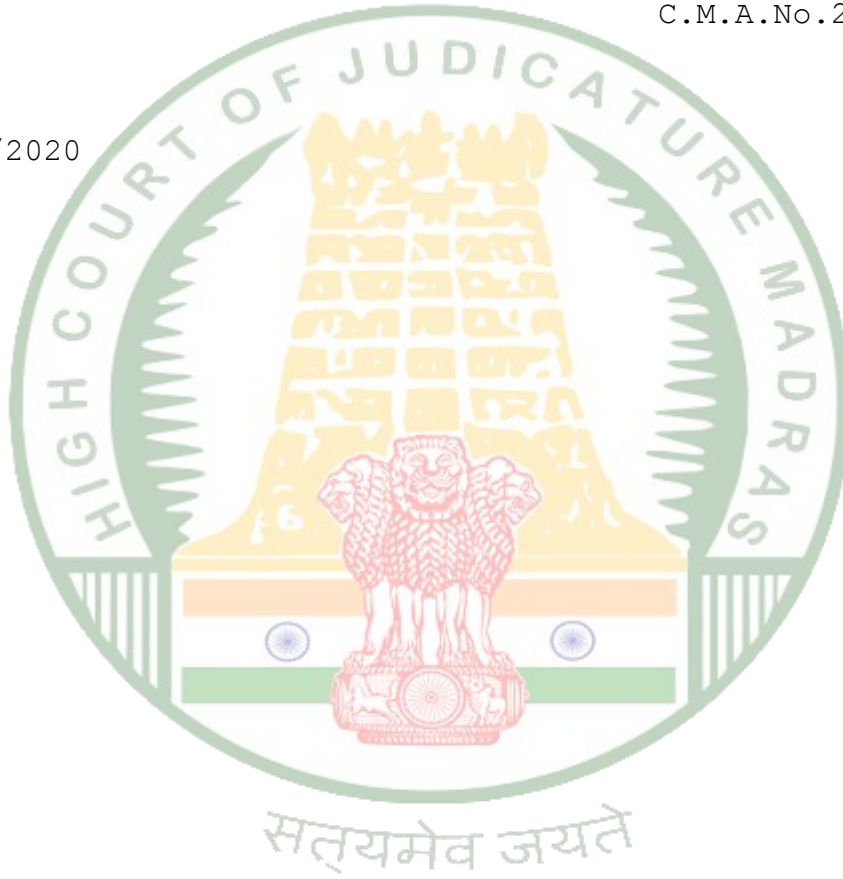
Copy to

The Section Officer,
VR Section,
High Court,
Madras.

+lcc to Mr.P.Satheesh Kumar, Advocate Sr.67036

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srg 09/06/2020



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