

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 18.09.2019

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
and
THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A.No.2596 of 2019

1 M.SRIDHARAN
2 S.SUJATHA ... Appellants/ Petitioners

Vs

1 M/S.HARI AND CO
NO.48 3RD FLOOR
RAJAJI SALAI CH-01.
2 THE NEW INDIA ASSURANCE CO LTD
NO.45 MOORE ST CH-01 ... Respondents/ Respondents

PRAYER: Civil Miscellaneous Appeal filed against the judgement and decree dated 22/11/2018 in MCOP No.1674/2014 on the file of the MCT /II Court of Small Cause Chennai.

For appellants : Ms.Ramya V. Rao
For respondent : Ms.S.R.Sumathy, for R-2
R1- No Appearance

J U D G M E N T
(made by K.K.SASIDHARAN, J.)

The Motor Accident Claims Tribunal (Court of Small Causes, Chennai), without there being any challenge to the negligence, and in the absence of evidence adduced by the Insurance Company to prove the manner of accident, arrived at a factual finding that the accident was due to the negligence of the deceased and as such, the legal representatives are not eligible for compensation. The order dismissing the claim petition in M.C.O.P.No No.1674 of 2014 is under challenge at the instance of the unsuccessful claimants in M.C.O.P.No.1674 of 2014.

2. We have heard the learned counsel for the appellant. We have also heard the learned counsel appearing for the New India Assurance Co.Ltd., Chennai.

3. The appellants filed a claim petition in M.C.O.P.No.1674 of 2014 before the Motor Accident Claims Tribunal, Chennai, claiming compensation on account of the death of Thiru.S.Sunil

Kumar in a motor accident that took place on 29 September 2013. The deceased was driving a car bearing registration no.TN 01 AB 9650. The accident occurred at about 20.00 hours. The car was coming from Trichy to Chennai through the national highway. The driver of the trailer lorry bearing registration no.TN 04 AH 0964 drove the vehicle in a rash and negligent manner and took a turn from West to North and dashed against the car. The injured was taken to the hospital. Thiru.Sunil Kumar died on 30 September 2013. The police registered a case in Cr.No.783 of 2013 against the driver of the trailer lorry.

4. The appellants in their claim petition made a claim that the deceased was earning a sum of Rs.3,82,124/- per annum. He was working as an Executive Assistant. The father and sister of the deceased are the claimants. Before the Trial Court, the appellants produced Ex.P-1, the first information report, registered by the police wherein the driver of the lorry was shown as the accused. In order to prove the accident, P.W.2 was examined. There was no substantial challenge to the evidence tendered by P.W.2 with regard to the manner in which the accident took place.

5. The Motor Accident Tribunal on a perusal of the evidence, observed that in normal circumstances it is to be taken that the accident occurred due to the rash and negligent driving of the lorry driver, who has been named by the police in the charge sheet. After saying so, the Trial Court considered various other materials to see as to whether the probability is otherwise. The learned Judge scanned the material evidence like a criminal court and ultimately held that the accident was not due to the negligence of the lorry driver. However, the fact remains that not even a single witness was examined by the Insurance Company to prove the manner of accident.

6. We have perused the materials produced by the appellants before the Trial Court. The observation mahazar and rough sketch produced by the appellants before the Trial Court does not support the view taken by the Tribunal. In case the Tribunal was of the view that the deceased was responsible for the accident, sufficient opportunity should have been given to the appellants to produce materials to substantiate their claim. The available evidence clearly supported the case pleaded by the appellant. Even the Tribunal initially observed that the lorry driver was negligent. The criminal proceedings also indicates the role of the lorry driver in the accident.

7. The Trial Court scanned the materials even in the absence of a challenge at the instance of the Insurance Company to the negligence part and arrived at a conclusion that the lorry owner was not responsible. We do not approve the manner in which the claim petition was disposed of by the Tribunal. Sufficient opportunity was not given to the parties to prove their case as

the Court initially proceeded as if the lorry driver was responsible for the accident. We are therefore of the view that the matter requires fresh consideration.

8. The decree dated 22 November 2018 is set aside. The original petition in M.C.O.P.No.1674 of 2014 is restored to the file of the Motor Accident Claims Tribunal, II Court of Small Causes, for fresh consideration. We permit the parties to produce materials to prove their respective case. The Tribunal is directed to consider the materials and pass an award on merits. None of the observation contained in the instant judgment would stand in the way of taking a decision by the Trial Court on merits.

9. The accident is of the year 2014. We therefore direct the Tribunal to dispose of the original petition as expeditiously as possible and in any case, within a period of three months from the date of receipt of a copy of this judgment.

10. The Civil Miscellaneous Appeal is allowed. No costs.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

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To
The MCT /II Court of Small Cause Chennai.

Copy to:

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

+1cc to Ms.S.R.Sumathy, Advocate SR.No. 80062

C.M.A.No.2596 of 2019

A.SK(03/09/2020)

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