IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.03.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2300 of 2017

1.Ragunathan
2.Malliga
3.Vinoth ..Appellants/Claimants

.Vs.

1.Anand

2.The Branch Manager,
United India Insurance Co. Ltd.,
No.139, CG Complex,
Kumaran Road,
Coimbatore 641 601. ..Respondents/ Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award dated 17.04.2017 made in M.C.O.P.No.183 of 2014 on the file of the Chief Judicial Magistrate, (Motor Accident Claims Tribunal), Ariyalur.

For Appellants : Mr.S.Kamadevan

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellants/claimants challenging the order of dismissal dated 17.04.2017 made in M.C.O.P.No.183 of 2014 on the file of the Chief Judicial Magistrate, (Motor Accident Claims Tribunal), Ariyalur.

2.The appellants/claimants filed M.C.O.P.No.183 of 2014 on the file of the Chief Judicial Magistrate, (Motor Accident Claims Tribunal), Ariyalur, claiming a sum of Rs.25,00,000/- as compensation for the death of one Kolenjinathan who died in the accident that took place on 10.12.2013. The Tribunal considering the pleadings, oral and documentary evidence, dismissed the claim petition. Against the said order of dismissal dated 17.04.2017 made in M.C.O.P.No.183 of 2014, the appellants have come out with the present appeal.

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3.The learned counsel appearing for the appellants contended that the Tribunal failed to see that the accident occurred only due to rash and negligent riding by the rider of the motorcycle belonging to the 1st respondent. The Tribunal erred in not accepting the evidence of P.W.3 who is an eye witness who deposed that rider of the motorcycle drove the motorcycle in a rash and negligent manner and hit the TATA Ace after over taking a lorry. The reasons given by the Tribunal for not accepting the evidence of P.W.3 is erroneous. The Tribunal failed to see that the appellants have stated in the claim petition that the accident occurred due to rash and negligent riding by the rider of the motorcycle and let in evidence to substantiate the said contention. The learned counsel appearing for the appellants contended that FIR cannot be looked into as the complainant is not an eye witness. The Tribunal ought to have seen that P.W.2, the Sub-Inspector of Police who investigated the case has deposed that the accident occurred due to rash and negligent riding by the rider of the motorcycle belonging to the 1st respondent and prayed for allowing the appeal.

4.Heard the learned counsel appearing for the appellants and perused the materials available on record.

5.From the materials on record, it is seen that the appellants have claimed compensation on the ground that the accident has occurred due to rash and negligent riding by the rider of the motorcycle belonging to the 1st respondent. To substantiate the said contention, they have examined P.W.1 and P.W.2, the Sub-Inspector of Police/Investigating Officer. Both P.W.1 and P.W.2 are not eye witnesses. P.W.3 has deposed that the motorcycle driven by its rider in a rash and negligent manner, overtook the lorry and dashed against the TATA Ace and caused the accident. From the award of the Tribunal, it is seen that P.W.3 was riding his motorcycle behind the TATA Ace at a distance of 100 ft. The Tribunal considering this fact, held that P.W.3 could not have seen the accident as the accident happened in front of TATA Ace. The reason given by the Tribunal is valid for rejecting the evidence of P.W.3. The brother of the rider of the motorcycle lodged the complaint against the driver of the TATA Ace, stating that the accident occurred only due to rash and negligent driving by the driver of the TATA Ace. The appellants did not examine the complainant or rider of the motorcycle to prove that the accident occurred only due to negligent riding by the rider of the motorcycle and that the contents of the complaint is not correct. The appellants have not objected to the contents of the FIR and have not lodged any complaint against the rider of the motorcycle. The Tribunal considering all the materials on record in proper perspective, dismissed the claim petition on the ground that the appellants failed to prove the negligence on the part of the rider of the

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motorcycle belonging to the 1st respondent. There is no error or reasoning of the Tribunal warranting interference by this Court.

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

gsa

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The Chief Judicial Magistrate,
(Motor Accident Claims Tribunal),
Ariyalur.

2.The Record Keeper,
V.R.Section,
High Court,
Chennai.

+1cc to Mr.S.Kamadevan, Advocate, SR.No.24557
+1cc to Mr.C.Paranthaman, Advocate, SR.No.24610

C.M.A.No.2300 of 2017

Kak(28/06/2019)

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