

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 07.11.2019

CORAM:

THE HON'BLE MR.JUSTICE R.MAHADEVAN

Civil Miscellaneous Appeal No.41 of 2017

Akthar Ansari

... Appellant/Petitioner

Vs.

1. A.Thanislas

2. Oriental Insurance Company Ltd.,
Prakasam Road, Broadway,
Chennai - 1.

... Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under section 173 of Motor Vehicle Act, 1988 against the decree and judgment dated 27.09.2013 made in M.C.O.P.No.989 of 2010 on the file of the Motor Accidents Claims Tribunal, (II-Additional District Court), Poonamallee.

For Appellant : Mr.K.Varadha Kamaraj

For Respondents : Mr.N.Sampath (for R1)
: Mr.J.Chandran (for R2)

JUDGMENT

In a Road Traffic Accident that had taken place on 30.07.2010, the son of the claimant sustained grievous injuries and he died 16 days after the accident. For the death of his son, the claimant has filed a claim petition seeking compensation of Rs.5 lakhs.

2. The claim petition was resisted by the second respondent / Insurer stating that the son of the claimant was not hit by the lorry, which was owned by the first respondent, rather, he was hit by a car and only because of the same, the claimant's son sustained grievous injuries. According to the Insurer / insurance company, it is a hit and run case; that the lorry which was insured with them did not involve in the said accident, hence, the insurance company cannot be mulcted with any liability, therefore, the learned counsel for the Insurance Company prayed for dismissal of the claim petition.

3. Before the Tribunal, the claimant was examined as PW.1 and an eye witness for the alleged occurrence was examined as P.W.2 apart from marking Exs.P1 to P6. On the side of the respondents, the Insurance company filed an Investigation report, which was marked as Ex.R1 and one P.T.Maria Alfered Bosco, a staff of the Insurance Company was examined as RW.1.

4. The Tribunal disbelieved the case of the claimant that his son was hit by lorry, due to which the deceased died, with the following three folds reasonings:-

1. the First Information Report came to be registered 16 days after the alleged accident.

2. In the Accident Register/Ex.P5, even though it was mentioned as RTA, it was clearly mentioned that the deceased was hit by a car.

3. PW.2, the alleged eye witness, has given inconsonance version with regard to the involvement of the lorry of the respondents.

5. Citing the above reasonings, the Tribunal has concluded that the claimant has approached the Tribunal for compensation with unclean hands and dismissed the claim petition.

6. Heard both sides.

7. The learned counsel for the appellant / claimant submitted that the Tribunal went wrong in dismissing the claim petition by relying upon Ex.P-5-AR copy, by overlooking Ex.P-1-FIR and the evidence of P.W.2; that the Tribunal failed to appreciate the fact that the R-1 / Insurer has not disputed the involvement of vehicle in the accident; that the Tribunal has not followed the precedents of this Court and the Supreme Court, in similar circumstances; and the Tribunal ought to have allowed the claim as prayed for, by granting the compensation of Rs.5,00,000/-.

8. Per contra, the learned counsels appearing for R-1 / Insured and R-2 / Insurer, by reiterating the observations made by the Tribunal, justified the dismissal award. They submitted that the Tribunal has taken the materials on record and is justified in dismissing the claim petition and hence, no interference is required.

9. A perusal of the materials available on record would go to show that the son of the claimant, who was riding the cycle at the time of accident was in an inebriated condition. Subsequently, he was taken to the hospital, where he was given treatment. However, he succumbed to the injuries on 16.08.2010,

i.e., 16 days after the accident. The First Information Report came to registered only upon the death of the deceased, at the instance of his father/claimant herein.

10.As rightly pointed out by the Tribunal, the delay in giving the complaint has not been properly explained. The Tribunal has rightly pointed out that there will be a police out-post in every Government Hospital and there is no reason assigned by the claimant as to why the medico legal case has not been informed to the Police for investigation. However, the fact remains that in Ex.P5 / AR copy, it was mentioned that the deceased was hit by a car.

11. PW.2 , who was walking along with the deceased, on the fateful day, is said to have witnessed the accident. However, his version did not inspire the confidence of the Tribunal and this Court, for the reason that he simply stated that he informed about the accident and the injuries sustained by the deceased to his father/claimant herein and even he has not stated as to who has taken the deceased to the hospital; he did not state anything and take any steps to either inform the police or accompanied with the injured to the hospital. Since the evidence of PW.2 is unnatural, it cannot be believed. Further, the reasons assigned by the Tribunal are cogent and based on materials available on record. No new fact or ground has been made out by the claimant / appellant herein to come to a different conclusion than the one arrived at by the Tribunal.

12. For all the above reasons, this Court is of the view that this is a hit and run case, in which, the son of the claimant sustained injuries and after 16 days of treatment, he died in the hospital. In such circumstance, there is no evidence to show that there is involvement of the lorry owned by the first respondent in the accident.

13.For the foregoing reasons, this Civil Miscellaneous Appeal is dismissed, by confirming the decree and judgment dated 27.09.2013 made in M.C.O.P.No.989 of 2010 on the file of the Motor Accidents Claims Tribunal, (II-Additional District Court), Poonamallee. No costs.

Sd/-

Assistant Registrar (CO)

//True Copy//

Sub Assistant Registrar

srk

To

1. The Motor Accidents Claims Tribunal,
(II-Additional District Court),
Poonamallee.

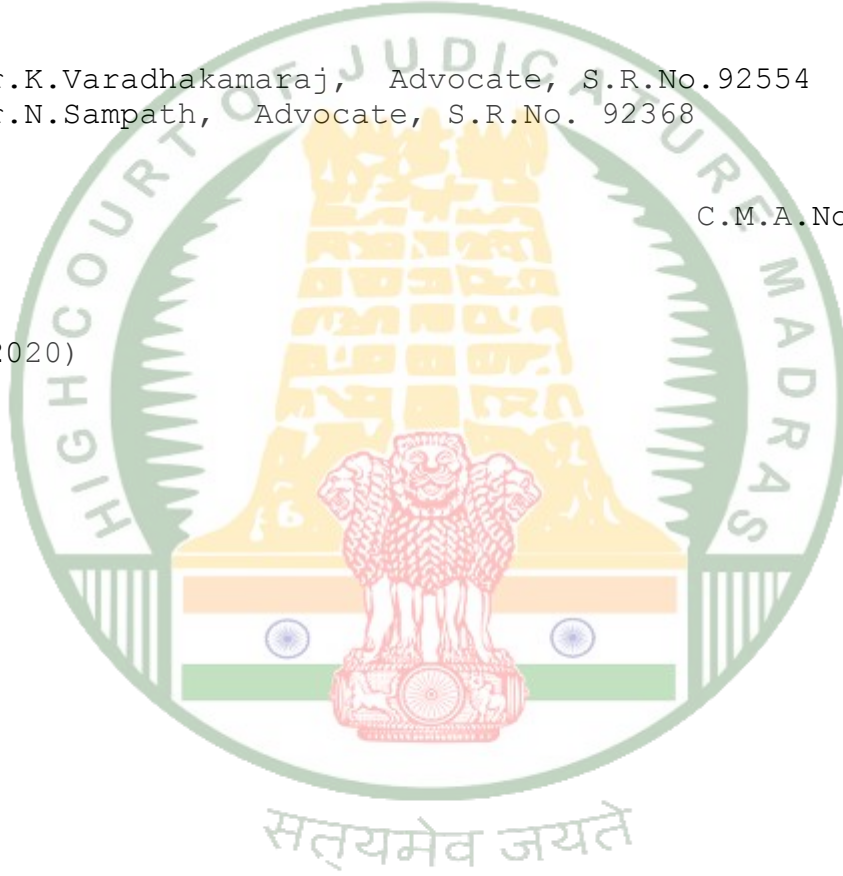
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The Section Officer,
V.R. Section, High Court,
Madras - 104.

+1cc to Mr.K.Varadhakamaraj, Advocate, S.R.No.92554
+1cc to Mr.N.Sampath, Advocate, S.R.No. 92368

C.M.A.No.41 of 2017

RSV(CO)
GN(09/09/2020)



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