

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.03.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2004 of 2008

1.A.Arokkiarmy

2.Minor Ezhil Arasan

3.Minor Ezhil Arasi

4.Minor Anbarasan

(Minor appellants 2 to 4 rep. by their
next friend and mother 1st appellant)

5.Jaya Rakini

6.Anthony Charrly

.. Appellants /Claimants

Vs.

1.Mohammed Usman

2.The Divisional Manager

Divisional Office

United India Insurance Co. Ltd.

46-51, Katpadi road, Vellore-4.

.. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 17.11.2005 made in M.C.O.P.No.545 of 2004 on the file of Motor Accident Claims Tribunal, (Chief Judicial Magistrate's Court), Tiruvannamalai.

For Appellants : Mr.K.Prabhakaran for Mr.G.Rajan

For R2 : Mr.M.J.Vijayaraaghavan

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J U D G M E N T

The Civil Miscellaneous Appeal is filed challenging the order of dismissal dated 17.11.2005 made in M.C.O.P.No.545 of 2004 on the file of Motor Accident Claims Tribunal, Chief Judicial Magistrate's Court, Tiruvannamalai.

Page numbers

2.The appellants are claimants in M.C.O.P.No.545 of 2004 on the file of Motor Accident Claims Tribunal, Chief Judicial Magistrate's Court, Tiruvannamalai. They filed the said claim petition claiming a sum of Rs.10,00,000/- as compensation for the death of one Arokiadas, who died in the accident that took place on 30.09.2002.

3.According to the appellants, on the date of accident, i.e., on 30.09.2002 at about 7.00 p.m., while the deceased was walking near John provisional store on Velanthangal - Melmalaiyanur road to his residence, T.V.S.50 belonging to the 1st respondent, which came in the opposite direction, driven by its rider in a rash and negligent manner, dashed on the deceased Arokiadas and caused the accident. Due to the accident, the appellant sustained grievous injuries all over the body and died in the hospital on 02.10.2002. Hence, the appellants filed the above claim petition claiming compensation against the respondents.

4.The 1st respondent, owner of the T.V.S.50, filed counter statement denying the averments made in the claim petition and stated that he sold the two wheeler to one Elumalai on 30.11.1999 for a sum of Rs.13,000/-. On 03.11.2000, the 1st respondent went abroad and he has continuously been working there as a labour till date. Therefore, the said Elumalai has to be added as party to the claim petition. Even if the alleged T.V.S.50 hit the deceased, he cannot sustain fatal injuries. The 1st respondent is not the owner of the two wheeler and he had not paid any insurance to the 2nd respondent/Insurance Company. He has also denied the age, avocation and income of the deceased. In any event, the compensation claimed by the appellants is excessive and prayed for dismissal of the claim petition.

5.The 2nd respondent filed counter statement denying the averments made in the claim petition and stated that the accident did not occur due to rash and negligent riding by the rider of the T.V.S.50 belonging to the 1st respondent. The alleged accident has occurred on 30.09.2002 and the complaint was lodged on 03.10.2002, only after the death of the deceased Arokiadas. According to the appellants, the deceased was admitted in the Government hospital, Gingee, on 02.10.2002 at about 6.40 a.m. and no complaint was given in the Government hospital. As per F.I.R., the vehicle involved in the accident was left by the driver of the vehicle. The Motor Vehicle Inspector inspected the vehicle only on 17.10.2002. The entire case was concocted with a view to get compensation. Therefore, the 2nd respondent/Insurance Company is not liable to pay any

Page numbers

compensation to the appellants. The 2nd respondent has also denied the age, avocation and income of the deceased. In any event, the compensation claimed by the appellants is excessive and prayed for dismissal of the claim petition.

6. Before the Tribunal, the 1st appellant, wife of the deceased, examined herself as P.W.1, one Arputharaj, brother-in-law of the deceased, was examined as P.W.2, one Sekar was examined as P.W.3 and marked eight documents as Exs.P1 to P8. On the side of the respondents, J.E.Amburose and Kumar were examined as R.W.1 & R.W.2 and two documents were marked as Exs.R1 and R2.

7. The Tribunal considering the pleadings, oral and documentary evidence, dismissed the claim petition holding that the accident has not occurred as alleged by the appellants.

8. Against the order of dismissal dated 17.11.2005 made in M.C.O.P.No.545 of 2004, the appellants have come out with the present appeal.

9. The learned counsel appearing for the appellants contended that the Tribunal erred in dismissing the claim petition on the ground that there was four days delay in lodging the complaint. The delay in lodging complaint is not fatal to the claim of the appellants. The Tribunal ought to have accepted the claim of the appellants and granted compensation. The Tribunal erred in dismissing the claim petition as false without examining the Police Officer, who investigated the case and without appreciating Ex.P5/judgment of the Criminal Court. Ex.P5 is the Court document. The Criminal Court convicted the rider of the T.V.S.50 for his rash and negligent riding. The appellants proved the accident by marking Ex.P5. The Tribunal erred in relying on evidence of R.W.2 and Ex.R2, which was self serving statement made on surmises. The Tribunal ought to have accepted the evidence of P.W.1, P.W.2 the documents marked by the appellants and ought to have held that the accident has occurred as claimed by the appellants, the deceased Arokiadas died due to the injuries sustained by him in the accident and prayed for setting aside the award of the Tribunal and granting compensation.

10. Per contra, the learned counsel appearing for the 2nd respondent/Insurance Company contended that no such accident has occurred and the deceased Arokiadas sustained injuries not in the accident as alleged by the appellants. The Tribunal after appreciating all the materials available on record, rightly dismissed the claim petition. The appellants have not made out

Page numbers

any case for allowing of this appeal and prayed for dismissal of the appeal.

11. Heard the learned counsel appearing for the appellants as well as the learned counsel appearing for the 2nd respondent and perused the entire materials available on record.

12. It is the case of the appellants that on 30.09.2002, at about 7.00 p.m., while the deceased Arokiadas was walking near John provisional store on Velanthangal - Melmalaiyanur road to his residence, T.V.S.50 belonging to the 1st respondent, which came in the opposite direction, driven by its rider in a rash and negligent manner, dashed on the deceased Arokiadas and caused the accident. In the accident, the said Arokiadas sustained head injury and died in Jipmer hospital on 02.10.2002. The accident has occurred only due to rash and negligent riding by the rider of T.V.S.50 and the respondents are liable to pay compensation to the appellants. It is the contention of the 1st respondent that he sold the vehicle to one Elumalai and he was working abroad at the time of accident. It is the contention of the 2nd respondent that no such accident has occurred and the said Arokiadas sustained injuries not in the accident as alleged by the appellants. The claim of the appellants is false. The appellants examined P.W.2, who is the brother-in-law of the deceased to substantiate their contention. The Tribunal rejected the evidence of P.W.2 on the ground that it is contradictory and not reliable. The complaint was lodged by P.W.2 on 03.10.2002 at 3.00 p.m. after a delay of 4 days. The appellants failed to explain the delay in lodging the complaint. R.W.2 in his evidence has deposed that immediately after the accident, the vehicle was seized by the Police and both the vehicle and its rider were handed over to the Police. If such statement is correct, P.W.2 would have given complaint at that time itself. T.V.S.50, the alleged offending vehicle, was sent for inspection by the Motor Vehicle Inspector only after eighteen days of the accident and the delay is not explained.

13. Further from the award of the Tribunal, it is seen that the appellants have taken the dead body of Arokiadas to Jipmer hospital and he was not admitted in the hospital, while he was alive. After the said Arokiadas body was kept in the said Jipmer hospital, P.W.2 gave a complaint to the Police. Further, in the Accident Register, it has been mentioned that the deceased Arokiadas fell down from the T.V.S.50 and got injured. The Tribunal considering all the above materials in proper perspective, held that the accident has not occurred as alleged by the appellants and the said Arokiadas did not die due to the injuries sustained by him in the accident involving T.V.S.50.

Page numbers

There is no error in the said finding of the Tribunal warranting interference by this Court.

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

Sd/-
Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

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To

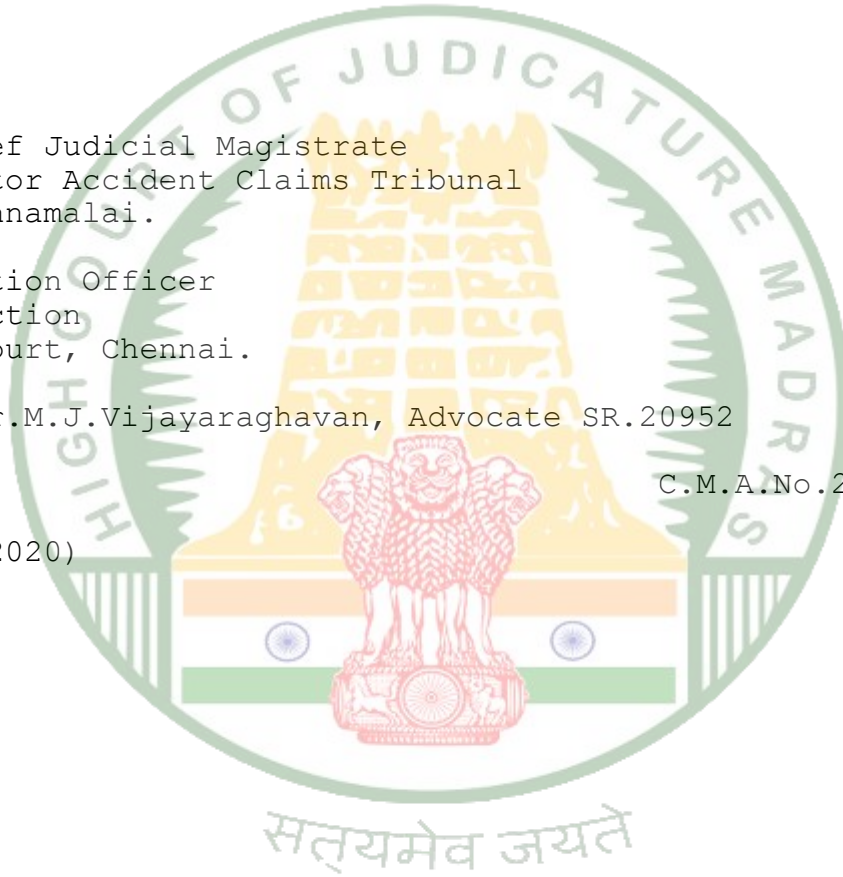
1.The Chief Judicial Magistrate
The Motor Accident Claims Tribunal
Tiruvannamalai.

2.The Section Officer
V.R.Section
High Court, Chennai.

+1cc to Mr.M.J.Vijayaraghavan, Advocate SR.20952

C.M.A.No.2004 of 2008

RSV(CO)
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Page numbers