

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED.12.08.2020

CORAM

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A.No.2647 of 2010

1.Radhakrishnan

2.Susila ... Appellants/Petitioners

vs.

1.Kannayiram (Set Exparte before the Tribunal)

2.The Oriental Insurance Company,
Vellore. ... Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the order and decreetal order dated 06.10.2007 made in MACTOP.No.864 of 2005 on the file of the Motor Accident Claims Tribunal, Sub Court, Gingee.

For Appellant : Mr.D.Pradeep Kumar

For Respondent 2 : Mr.M.J.Vijayaraghavan
Not ready in notice reg R1

JUDGMENT

[This Appeal has been taken up for hearing through Video Conferencing]

This appeal has been filed by the claimants challenging the impugned judgment and decree dated 06.10.2007 passed by the Motor Accident Claims Tribunal, Sub Court, Gingee in MCOP.No.864 of 2005.

2. Under the impugned judgment and decree, the claim of the Appellants seeking compensation for the death of Venkatesan was dismissed by the Tribunal.

3. The Appellants/ claimants are the legal representatives of the deceased venkatesan who according to them died on 13.02.2003 as a result of an accident which took place on

12.02.2003 caused by a lorry bearing registration No.TN47-B-6327 owned by the first respondent and insured with the second respondent. According to them, the deceased who is their son was travelling as a pillion rider in a motor cycle, when the lorry bearing registration No.TN47-B-6329 due to the rash and negligent driving by the driver of the said lorry, dashed against the motor cycle and as a result of the same, Venkatesan, the pillion rider sustained head injuries and after a day, he died.

4. The Tribunal under the impugned judgment and decree dismissed the claim of the Appellants/claimants on the following grounds (a) there was a delay in lodging of the FIR (b) the genuineness of Ex.P2 - Motor vehicle Inspector's Report and Ex.P3 - O.P. chit issued by the Thiruperumbudur Government Hospital are doubted, since there are discrepancies in the said documents (c) The Appellants/claimants have not impleaded the owner and the insurer of the two wheeler in which the deceased was travelling as a pillion rider (d) The death certificate of the deceased has not been produced in order to prove his death.

5. Before the Tribunal, the Appellants/claimants have filed four documents which were marked as Ex.P1 to Ex.P4 and two witnesses were examined on his side namely, the first Appellant who is the father of the deceased as PW1 and Arumugam, an eyewitness to the accident as PW2. On the side of the second respondent insurance company, neither any document was filed nor any witness examined.

6. Ex.P2 and Ex.P3 namely MVI Report and O.P. chit issued by the Thiruperumbudue Government Hospital respectively are public records. It is the contention of the Appellants/claimants before this Court that being public records, it is impossible for the Appellants/claimants to tamper with those documents. The learned counsel for the Appellants/claimants has also submitted before this court that the documents Ex.P2 & Ex.P3 are public records and therefore, the Tribunal has erroneously held the Appellants/claimants accountable for the corrections made in those documents. According to him, the corrections were never made by the Appellants/claimants and the said documents are genuine documents. There is force in the submission made by the Appellants/claimants in this Appeal. However, the Tribunal based on Ex.P2 and Ex.P3 has observed that there were corrections made in those documents and therefore, they cannot be treated as genuine documents.

7. The Tribunal under the impugned award has also rejected the claim of the Appellants/claimants on the ground that they have not filed the death certificate of the deceased Venkatesan. The learned counsel for the Appellants/claimants on instructions submits that if one more opportunity is granted to the Appellants/claimants, they will be able to establish the genuinity of their claim before the Tribunal by adducing additional oral and documentary evidence in support of their case.

8. This Court has perused and examined the impugned judgment and decree. Without any proper and reliable evidence, the Tribunal has rejected the claim of the Appellants/claimants on the ground that the genuineness of Ex.P2 and Ex.P3 are doubted.

9. This Court finds force in the submission made by the learned counsel for the Appellants/claimants with regard to Ex.P2 and Ex.P3. Their must be clinching evidence that Ex.P2 and Ex.P3 are bogus and fabricated documents, but as seen from the evidence available on record, this Court does not find any such clinching evidence.

10. This Court is of the considered view that non-production of the death certificate cannot be a ground for rejection of a claim as it is a matter of public record. It is also not established by the respondents as seen from the evidence available on record that Venkatesan is alive or is an imaginary person. While that be so, the Tribunal without any evidence ought not to have rejected the claim of the Appellants/claimants on the ground that they did not produce the death certificate of Venkatesan. The learned counsel for the Appellant has also contended before this Court that the Appellants/claimants will be in a position to produce the death certificate of Venkatesan, before the Tribunal, if one more opportunity is granted to them to adduce additional evidence before the Tribunal.

11. For the foregoing reasons, this Court is of the considered view that the Tribunal has erroneously rejected the claim without any basis and therefore, the matter will have to be remanded back to the Tribunal for fresh consideration in accordance with law.

12. In the result, the impugned judgment and decree dated 06.10.2007 passed by the Motor Accident Claims Tribunal (Sub Court, Gingee) is hereby set aside and this Appeal is disposed of by remanding the matter back to the Tribunal for fresh consideration after giving sufficient opportunity to the Appellants/claimants to adduce further evidence in support of their respective contentions and the Tribunal is directed to pass final orders within a period of one year from the date of receipt of a copy of this Judgment. It is made clear that the Appellants as well as the respondents are not permitted to amend their respective pleadings which is currently on record before the Tribunal. No costs.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1.The Subordinate Judge
Motor Accident Claims Tribunal
Subordinate Court, Gingee

Copy to
The Section Officer,
VR Section, High Court,
Chennai.

C.M.A.No.2647 of 2010

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SP(02/11/2020)

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