

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 02.06.2020

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.2919 of 2009 and
M.P.No.1 of 2009

National Insurance Company Ltd.,
Motor Third Party Cell,
No.751, Annasalai,
Chennai - 600 002

... Appellant

Vs

1. Mayadevi Sharma
2. Minor Raju Sharma
3. Minor Vishnu Sharma
4. Minor Arjun Sharma
5. P.Johnsirani

... Respondents

Prayer:

Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988 to set aside the Judgment and Decree dated 30.06.2009 made in M.C.O.P.No.3719 of 2003 on the file of Motor Accident Claims Tribunal, Chief Court, Small Causes, Chennai.

For Appellant : Mr. E.Rajadurai for
Mr.N.Vijayaraghavan

For Respondents : Mr.K.Palanivel for R1 to R4
R5 - Exparte

J U D G M E N T

This appeal has been filed against the Judgment and Decree dated 30.06.2009 made in M.C.O.P.No.3719 of 2003 on the file of Motor Accident Claims Tribunal, Chief Court, Small Causes, Chennai by raising various grounds.

2. The case of the respondents / claimants 1 to 4 is that on 01.05.2003 around 21.30 hrs, the deceased went to have a tea, who was working as a watchman in a timber depot, a TATA SUMO Car bearing Regn. No.TN 58A 7687 was driven in a rash and negligent manner and dashed against the deceased at GST Road, Chromepet, Chennai and the deceased was taken by the driver and he had thrown the deceased out in a nearby rock at Thirusulam and thereafter, the relative of the deceased had given a complaint and the police have traced the body of the deceased. Therefore, the claimants / respondents 1 to 4, who are the wife and children of the deceased have filed a claim petition seeking a sum of Rs.10,00,000/- as compensation.

3. The appellant / insurance company had submitted that the court below has awarded a sum of Rs.2,22,000/- with 7.5% interest and directed

the Insurance Company and the owner of the offending vehicle / 5th respondent to pay the compensation jointly. The appellant herein had filed a counter denying all the allegations and submitted that on 01.05.2003, driver of the TATA SUMO car has not driven the said vehicle in a rash and negligent manner and the claim made by the claimants are false and fabricated, which ought not to have been granted and the Tribunal has awarded high sum of compensation, which is without any basis.

4. Mr.Rajadurai, learned counsel, who is appearing for the appellant contended that the alleged accident had occurred on 01.05.2003, whereas the complaint was lodged only on 03.05.2003 belatedly, wherein the concerned police, has registered the case in Cr.No.311 of 2003 on 03.05.2003 under Sections 279 and 337 IPC. Further, charge sheeted the same and registered against the driver of the Sumo Car bearing Regn.No.TN 58A 7687 and it was informed before the court that the driver himself took the victim stating that he admit him in hospital, however, he deposed that subsequently the victim did not turn up and it was on this basis, the case was altered when the corpus of the body was found near a rock at Thirusulam from Section 174 Cr.P.C.,

5. The learned counsel for the appellant contended that no such TATA SUMO was involved in the accident and the alleged TATA SUMO, which is insured with the appellant-company was subsequently fixed for the purpose of claiming the compensation. As the appellants were immigrants from North east or Nepal or other Northern state, the appellants' counsel also contended that without prejudice to the manner in which the alleged accident is claimed to have occurred, the age, avocation and income of the deceased, avocation of the deceased and the income of the deceased were not proved properly and in the absence of any such proof of income, notional income alone can only be fixed. The Tribunal has awarded a sum of Rs.2,22,000/- fixing the liability on the Insurance Company and the same cannot be accepted, he pleaded.

6. The respondents / claimants have submitted that the driver of the TATA SUMO Car, viz., P.W.5, namely, Babu himself has deposed before the Tribunal that he actually drove the vehicle near the airport and the deceased Devi Prasad Sharma, who was crossing the road was hit by his car when he was returning from the Airport, subsequently, the said driver took the deceased through his car for treatment when he saw the said person was unconscious, fearing the same, the driver has placed the said

injured person by road side place at Tirusulam and he left to his native place and after three days, he was arrested and released on bail.

7. The learned counsel for the respondents / claimants also submitted that the case was proved before the Tribunal and the Tribunal had rightly awarded the compensation and hence the same need not be interfered with.

8. Heard the learned counsel appearing for both sides and perused the documents placed on record.

9. On the side of the claimants / respondents, witnesses P.W.1 to P.W.5 were examined and Exs.P.1 to P.11 were marked. On the side of the appellant three persons, viz., R.W.1 to R.W.3 were examined and Ex.R.1 to R.9 were marked.

10. The present appeal is filed questioning the liability. It is the case where the appellant / Insurance Company has placed reliance that the entire claim is a bogus claim and the alleged vehicle, viz., TATA sumo car was fixed by the parties for the purpose of claiming compensation. The

fact remains that the deceased died on 01.05.2003, which is not disputed by the Insurance Company / appellant. The manner in which the legal heirs of the deceased claims the death of the deceased is disputed by the appellant herein.

11. On perusing the records, this Court directed the Jurisdictional Police concerned Station to file a report before this Court, by an order dated 20.01.2020 and the Inspector of Police, S-13, Chrompet Police Station, Chennai has filed report and Paragraph No.2 of the said report is extracted hereunder:

'I submit that a complaint was lodged by one Dhuknath Sharma on 03.05.2003 at about 15 hours at Chromepet police station stating that on 02.05.2003 at above 10.00 a.m., the persons working in Saraswathi Timber informed him that the persons who saw the incident that this uncle Devi Prasad Sharma who was working as a watchman in Saraswathi Timber Mart on 01.05.2003 at about 9.30 p.m., went to a shop nearby for having tea at GST Road, by that time, a TATA sumo bearing regn. No.TN58A7687 came at a high speed dashed against his uncle and took him in the said vehicle. He does not know what happen to him and though he searched for his uncle he could not find him and so request to take action aagainst the owner of the said TATA Sumo and rescue his uncle. The said complaint

was taken on file under Sections 279 and 337 of IPC vide FIR No.311 of 2003.'

12. It is also seen that the said Devi Prasad Sharma died on 01.05.2003 and on 02.05.2003, Post mortem was done by the Doctor at Government Hospital, Tambaram, a charge sheet was also altered to Sections 279, 304A IPC. The C.C.No.750 of 2003 was filed before the sub Court, Tambaram and the same was later withdrawn. As there was natures' disaster during December, 2015, the rain water entered into the Chromepet police station and the entire records pertaining to this case and other materials were lost and that they have filed the available materials before this Court.

13. Before the Tribunal, on the side of the respondents, P.W.2., one Devika, who was the Sub Inspector of Police, Chrompet police station had deposed that on 01.05.2003 around 9.30 p.m., the accident has taken place at Chrompet in GST Road opposite to one Saraswathy Timber Mart. A case was registered in Crime No.311 of 2003 under Sections 279 and 379 IPC along with Section 174 of Cr.P.C., and later the body was recovered, which was later identified by P.W.4, who got the body of the deceased and after investigation, the driver was arrested and subsequently, he was released on bail.

14. P.W.5, the driver of the TATA sumo Car, one Babu had deposed that he had driven the vehicle on 01.05.2003 and the deceased Devi Prasad Sharma was hit by his car when he was returning from the Airport, and thinking that he is alive, the driver took the said Devi Prasad Sharma in his car for treatment. However, he after seeing the said person was unconscious, took the deceased out of the car and placed him on the road side at Tirusulam on the way when he was proceeding towards Thiruvannamalai. P.W.5, namely, Babu also deposed that after three days, the police had arrested him and thereafter, released him on bail.

15. R.W.1, one Raghavan and R.W.2, who is the Insurance Company's investigator, one Sukumar had admitted to have witness the occurrence and based on their statements, the accused were fixed. However, the only reliance placed by the appellant was the evidence of P.W.3, Doctor, who had deposed that the deceased died due to the impact of the accident and further, the Doctor had also deposed that the injury and the death could have been caused when a person dies due to fall from hill or hit by a stone. When there is no clear cut evidence produced before the court to show that there was any eye witness to the said accident, just because the Doctor who was cross examined by the appellant had

deposed that the death could have occurred due to fall or hit by a stone also is not sufficient to disprove the manner, in which the accident had occurred. The driver, who was examined himself as P.W.5 had admitted that he had hit the said person and he has placed the said unconscious person near the roadside at Tirusulam and Deviga, Sub-Inspector of Police also reiterated the same and the report filed also on 20.01.2020 would show that no other contra evidence has been produced by the appellant / insurance company.

16. There are so many contradictions in the said evidence let in by the Insurance company and they were not in a position to prove the same beyond doubt. Under these circumstances, based on the oral and documentary evidence produced before the Tribunal, the Tribunal had considered the same and has come to the conclusion that the accident has occurred only in the manner as stated by the claimants and the appellant was not in a position to clearly establish the fact that the said claim was a bogus one.

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17. Regarding the quantum awarded by the Tribunal, the claimants have stated that the deceased was working as a security person in the

Saraswathy Timber Mart and drawing a sum of Rs.8,000/- per month, the claimants have not chosen to file any document proof to show that the said person was drawing so much and the proprietor of such timber mart was also not examined, though he has given his statement, considering the said aspect, the court below has rightly taken notional income of Rs.3,000/- per month and has awarded a reasonable amount of Rs.2,22,000/- as compensation, which is just and reasonable.

18. Accordingly, the appellant has failed to disprove the case of the claimant before the Tribunal and also before this Court. Even though the said appellant-Insurance Company has proceeded the case in a different angle, but was not in a position to prove their case without any doubt before this Court. When the concerned police officials had not been examined, the insurance company ought to have established their case by filing a complaint and if no action taken, ought to have got further direction from this Court by filing appropriate in criminal proceedings. The Police report filed on 31.01.2020 also shows that no documents were available, as there was a flood during December, 2015 and all the records got washed out. When there is no clear cut proof filed before this Court to show that the claim was a bogus one, this Court is not inclined to interfere with the order passed by the court below.

In the result, the present Civil Miscellaneous Appeal is dismissed and the award dated 30.06.2009 made in M.C.O.P.No.3719 of 2003 on the file of Motor Accident Claims Tribunal, Chief Court, Small Causes, Chennai is confirmed. Consequently, connected miscellaneous petition is closed. No costs.

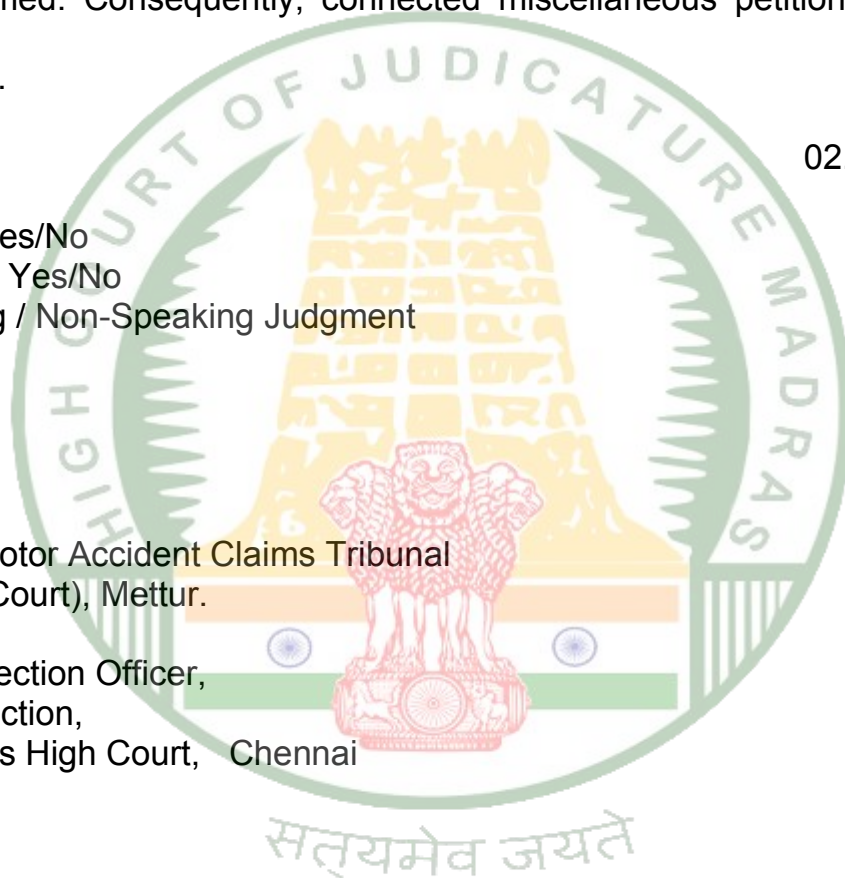
02.06.2020

Index : Yes/No
Internet : Yes/No
Speaking / Non-Speaking Judgment

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To

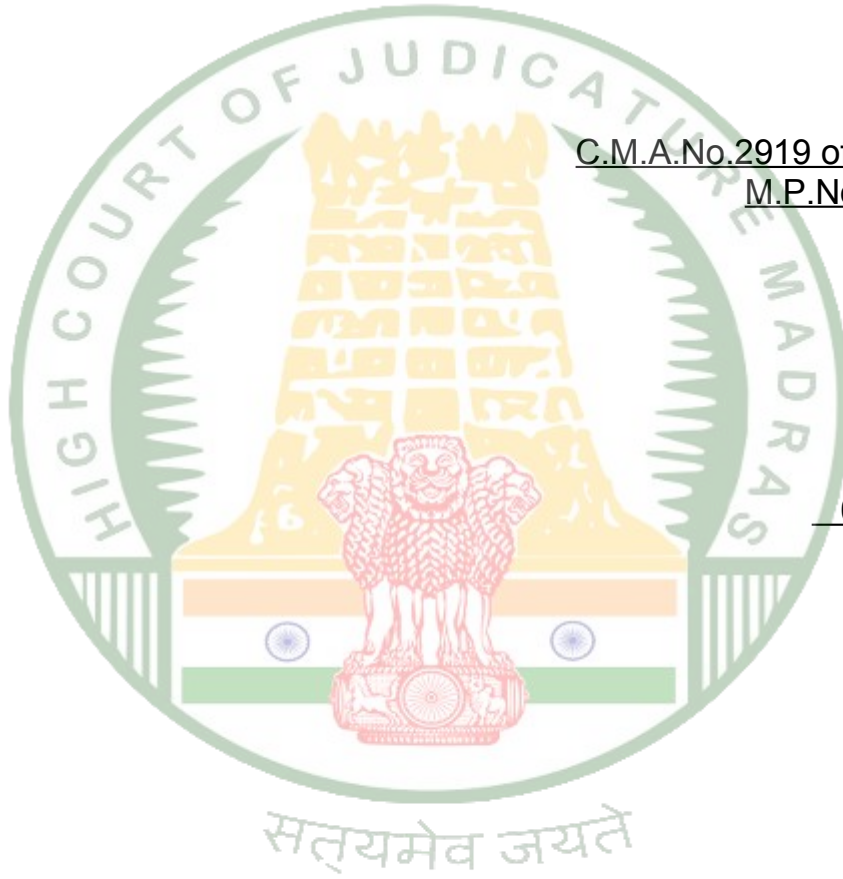
1. The Motor Accident Claims Tribunal
(Sub-Court), Mettur.
2. The Section Officer,
VR Section,
Madras High Court, Chennai



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V.BHAVANI SUBBAROYAN, J.,

ssd



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