



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 05.11.2020

Pronounced on: 19.11.2020

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THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Civil Miscellaneous Appeal No.1294 of 2016
and
C.M.P.No.9938 of 2016

The Branch Manager,
United India Insurance Co.Ltd.,
Old Bangalore Road,
Hosur Town & Taluk,
Krishnagiri District.

... Appellant/Respondent 2

Vs

1.Chinnaveerappa
S/o.Dasappa

2.Ellamma
W/o.Chinnaveerappa

3.Seenivas
S/o.Chinnaveerappa

4.Vengatapathi
S/o.Chinnaveerappa ... Respondents 1 to 4/Petitioners 1 to 4

5. Ramakrishnan ...Respondent 5/Respondent 1

Prayer:- This Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 18.08.2015 made in M.C.O.P.No.22 of 2014 on the file of the MACT (Additional District & Session Court) at Hosur.

For Appellant : Mrs.I.Malar

For Respondents : Mr.M.Baskaran for R1 to R4
: No appearance for R5



J U D G M E N T

(The case has been heard through video conference)

This Civil Miscellaneous Appeal is preferred by the Insurance Company against the award passed by the Tribunal at Hosur.

2. In this appeal, the appellant had taken a specific plea that the accident which alleges to have been taken place on 02.09.2004, in which one Madhesh aged about 19 years sustained injury when a tempo van bearing registration No.TN 41 Y 0689 rash and negligently dashed against him while walking along the Sarjapura to Bagalur Road near Kakkanur Vivekananda School. The injured was taken to the Government hospital, Hosur and was discharged after 10 days. A case was registered against the tempo van driver in Crime No.384 of 2004 by the Bagalur Police for the offence under Section 279 and 337 of IPC. While so, the said Madhesh died on 20.10.2010 after 6 ½ years. However claim petition filed by his family members seeking compensation for the death of Madhesh whose death in fact was a suspicious death and the matter under investigation in Crime No.222 of 2010 by the Sipcot police, Hosur. Though this facts placed before the Tribunal through evidence, the Tribunal failed to appreciate these facts and documents and had awarded a sum of Rs.7,82,000/- as compensation payable to the claimants along with interest at the rate of 7.5%. Alleging grave error of facts and law has been committed by the Tribunal entertaining the claim petition as if the deceased Madhesh died in the road accident which occurred 6 ½ years ago, the present Civil Miscellaneous Appeal is filed to set aside the said award.

3. The learned counsel for the respondents would submit that though the accident occurred 6 ½ years ago, the victim was under continuous treatment at various hospital and he did not recover from his injury till his death. Therefore, cause of death due to injury sustained at the time of accident. Hence the award of the Tribunal is sustainable.

4. It is an admitted facts that on 02.09.2004, near Vivekananda School, Bagalur to Kakkanur Road, Madesh aged about 17 years was hit by the tempo van bearing registration No.TN 41 Y 0689. First Information Report under Section 384 of 2004 was registered by the Bagalur Police against Mr. K.Sivan, the driver of the tempo van. The FIR is marked as Ex.P-1. The complaint was given by the victim himself, when he was in the Government hospital, Hosur and the same was recorded by the Sub Inspector of police, Bagalur police station. The victim was conscious and has narrated the manner in which the accident occurred and the



injury he sustained. From the FIR and the wound certificate, it is seen that the (i) Suture wound of 3 cm in the left Occipital, (ii) Abrasion of 3cm x 3cm in the left parietal region, (iii) Old scar present in the temporal region just above the ear, (iv) Old scar present in the Vertex and (v) Irregular abrasion of 15m x 10 cm in the left foot. For the said injury he had been treated and got discharged. After 6½ years, he died on 20.10.2010, alleging that the deceased Madhesh was not keeping good health for few days and he was taken to the Hosur Government hospital on 20.10.2010, the doctor advised him to admit in speciality hospital at Bangalore. So, he took his son in a car to Bangalore, but on the way he died. The Sipcot police has registered the case under Section 174 Cr.P.C., and has sent the body for post-mortem. The post-mortem report does not disclose any injury for cause of death except awaiting chemical analysis report. Particularly the post-mortem doctor has certified the skull intact, base of skull intact and membrane intact. So by no such imagination one should arrive at conclusion that the death of Madhesh on 20.10.2010 was due to the accidental injury sustained by him on 02.09.2004. The accident is neither the immediate cause nor remote cause for the death.

5. The Tribunal had not discussed or considered how the injury mentioned in the wound certificate Ex.A-2 could have caused the death to the victim after 6 ½ years on 20.10.2010. Except referring the oral evidence of PW.1 that the victim was taking continuous treatment, there is no other evidence to co-relate the accident injury and death. The oral evidence of PW.1 is contrary to the post-mortem certificate and the second FIR given by PW.1. The Tribunal in the absence of any co-relating evidence to show the death was caused due to the accident injury ought not to have entertained this claim petition after 6 ½ years from the date of accident and more so, ought not to have awarded a sum of Rs.7,82,000/- without any basis. This Court finds that the Tribunal award is perverse, baseless and result of non application of mind. Hence the award of the Tribunal is liable to be set aside.

6. Accordingly, this Civil Miscellaneous Appeal is allowed and the award of the Tribunal is set aside. Consequently, connected civil miscellaneous petition is also closed. No costs.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar



rpl

To

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1. The Motor Accident Claims Tribunal,
Additional District & Session Court,
Hosur.

+1cc to Mr.M.Baskaran, Advocate SR.No.37214

C.M.A.No.1294 of 2016

and

C.M.P.No.9938 of 2016

PA (CO)

GMV (25/08/2021)