

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 28.02.2020

Coram:

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

C.M.A.No.354 of 2011

1.Tmt.Revathy
2.Priyanka (minor)
3.Vinoth (minor)
4.Rebakkal (minor)
[Appellants 2 to 4 are minors
Rep. by their mother and natural Guardian]
... Appellants/Claimants

Versus

1.N.Adhimoolam
[R1 remained ex-parte before the Tribunal.
Hence the notice may be dispensed with]
2.The Branch Manager,
M/s National Insurance Co. Ltd.,
Branch Office, No.2,
Jerome Building, First Floor,
Fort Station Road,
Trichy - 2. ... Respondents/ Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Order and Decreetal order dated 18.08.2010 made in M.C.O.P.No.417 of 2009 on the file of the Motor Accidents Claims Tribunal / Chief Judicial Magistrate, Perambalur.

For Appellants : Mr.S.Kamadevan
For Respondents: Mr.Arunkumar (for R2)
: Ex-parte - R1

J U D G M E N T

This Civil Miscellaneous Appeal is filed by the appellants [claimants], challenging the judgment and decree dated 18.08.2010 passed in M.C.O.P.No.417 of 2009 on the file of the Motor Accidents Claims Tribunal / Chief Judicial Magistrate, Perambalur.

2.For the sake of convenience, hereinafter the parties are referred to, as per their litigative status before the Tribunal.

3.It is a case of fatal. The case of the claimants before the Claims Tribunal is that, on 21.08.2008 at about 11.30 a.m., when the deceased Ravi was travelling in an Ashok Leyland Tanker Lorry bearing Registration No.TN-29-N-0236, as a cleaner, the driver of the said lorry had driven the said vehicle, at a very high speed in a rash and negligent manner and dashed against the centre median of the road. Due to the said accident, the deceased Ravi fell down on the road and thereafter, the lorry, in which the deceased was travelled, ran over on the body of the deceased, resultantly he succumbed to fatal injuries and died on the spot itself. The said accident had occurred only due to the negligent act of the driver of the first respondent's vehicle. A case has been registered in Crime No.653 of 2008 under Section 304 (A) of I.P.C., in which, the driver of the lorry was cited as accused. The said vehicle was owned by the first respondent and insured with the second respondent. Before the death, the husband of the first claimant was working as a lorry cleaner and earning a sum of Rs.6,000/- per month. He is the only bread-winner of his family, due to his death, the claimants/appellants have lost his love and affection. Hence, the claimants sought a consolidated sum of Rs.10 Lakhs as compensation towards the death of the said Ravi.

4.Before the Claims Tribunal, the first respondent remained ex-parte.

5.Opposing the claim made by the appellants/ claimants, by filing counter, the second respondent/Insurance company denied the accident itself and stated that the driver of the offending vehicle is a necessary party to prove the claim of the claimants. In the First Information Report, which registered for the alleged occurrence, the name of the driver was not mentioned. Only on the basis of the report given by the Village Administrative Officer, the case has been registered, in which, the vehicle owned by the first respondent was mentioned as offending vehicle. More than that, the alleged offending vehicle was not involved in the accident. The averments made in the First Information Report did not show that the deceased Ravi was working as Cleaner in the offending vehicle. For claiming compensation, a false case has been foisted against the first respondent's vehicle. In the inquest report, preferred during the time of investigation, it was mentioned that on 21.08.2008 at about 11.30 hours near to Perambalur, when the deceased Ravi was walking on the road, a unknown vehicle came and dashed against him, in fact, the same was identified from the report submitted by the Investigation Officer. The age, avocation and income of the deceased are denied and the claim of the claimants are also exorbitant, therefore, the second respondent/Insurance Company sought for dismissal of the Claim Petition.

6. Before the Claims Tribunal, the first claimant, who is the wife of the deceased Ravi was examined as PW.1 and the first respondent in the claim petition was examined as PW.2. Apart from that one Ravi, an eye witness to the scene of occurrence was examined as PW.3. Besides 9 documents were marked as Exs.P1 to P9. On the side of the respondents, none have been examined and no documents were marked.

7. Having considered all the materials placed, the Claims Tribunal came to the conclusion that the alleged vehicle viz., the Ashok Leyland Tanker Lorry bearing Registration No.TN-29-N-0236 has not involved in the said accident and therefore, the claimants are not entitled to any compensation, neither from the first respondent nor from the second respondent and conclusively the claim petition was dismissed. Challenging the same, the claimants/appellants are before this Court with the present Civil Miscellaneous Appeal.

8. Today, when the appeal is taken up for hearing, I have heard the arguments of Mr.S.Kamadevan, learned counsel for the appellant, Mr.Arunkumar, learned counsel appearing for the second respondent and also perused the records carefully.

9. The learned counsel for the claimants/appellants would contend that the Claims Tribunal, without appreciating the evidence given by PW.2/owner of the vehicle, dismissed the claim petition filed by the claimants. He would further contend that the owner of the offending vehicle himself admitted that only the vehicle belonging to him was involved in the said accident. So, there was no necessity for the claimants to prove that the alleged vehicle owned by the first respondent alone is responsible for the alleged accident. Accordingly, he prayed to set aside the order passed by the Claims Tribunal and prayed to award the compensation as prayed for in the claim petition filed before the Claims Tribunal.

10. Per contra, the learned counsel appearing on behalf of the second respondent would contend that in the document i.e. Ex.P1/First Information Report, the name of the driver of the offending vehicle and also the registration number of the vehicle, were not mentioned. Further, in the complaint given by the Village Administrative Officer, he has not stated about the details of the accused, who had committed the accident. To prove the nexus between the occurrence and the vehicle, no relevant evidence was produced, on the side of the claimants. Therefore, it is not necessary to interfere with the findings arrived at by the Claims Tribunal.

11. Now, considering the submissions made by the learned counsel on either side, only based on the complaint given by the Village Administrative Officer, the police had registered the case against the driver of the first respondent's vehicle, thereafter, conducted the enquiry and filed a final report. Now, on going through the averments made in the First Information Report, the said Village Administrative Officer did not say anything about the registration number of the offending vehicle and he has also not stated about the particulars of the driver, who had driven the offending vehicle at that time of accident.

12. Only after investigation, the Investigation Officer came to the conclusion that the driver of the first respondent alone responsible for the occurrence. The said conclusion was supported through the evidence given by PW.3, who is the driver of the first respondent's offending vehicle, at that time of occurrence.

13. Now, on going through the Judgment rendered by the Claims Tribunal, it was held as in respect to the time of accident and in respect to the presence of deceased in the vehicle, there was a clear contradiction in between the evidence given by PW.2 and PW.3. The said contradiction creates a doubt as to whether the alleged offending vehicle was involved in the accident or not. Accordingly, the Claims Tribunal dismissed the claim petition filed by the claimants.

14. In this regard, on going through the entire circumstances put-forth by the claimants, it is an unbelievable one that the owner of the vehicle and the driver of the vehicle has supported the case of the claimants, that too, they have admitted the case of the claimants. If really, the alleged offence had happened as per the version stated by PW.3, it is the duty vested with PW.2 and PW.3 to lodge a complaint before the Police, immediately after the occurrence, but, this case has been filed, based on the complaint given by the Village Administrative Officer. So, the evidence given by PW.3 in support of the claimants case is unbelievable and not substantiated through the relevant evidence. Though the inquest report was not exhibited before the Claims Tribunal, in the counter affidavit filed by the second respondent, they have specifically stated that as the details with regard to the death of Ravi has not been mentioned in the column No.9 of the inquest report. In this regard, the claimants have not filed any additional affidavit, by disputing the said statements. Therefore, the oral and documentary evidence given by PW.2 and PW.3 are against the averments set out in the written document. As per the Section 92 of the Indian Evidence Act, since the evidence given by PW.2 and PW.3 is against the written document, the same cannot be accepted for believing the case of the claimants.

15. Therefore, this Court is of the considered opinion that there is no infirmity found that in the findings arrived at by the Claims Tribunal. Accordingly, the Civil Miscellaneous Appeal is dismissed by confirming the order dated 18.08.2010 made in M.C.O.P.No.417 of 2009 on the file of the Motor Accidents Claims Tribunal / Chief Judicial Magistrate, Perambalur. No costs.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

To

The Motor Accidents Claims Tribunal /
Chief Judicial Magistrate, Perambalur.

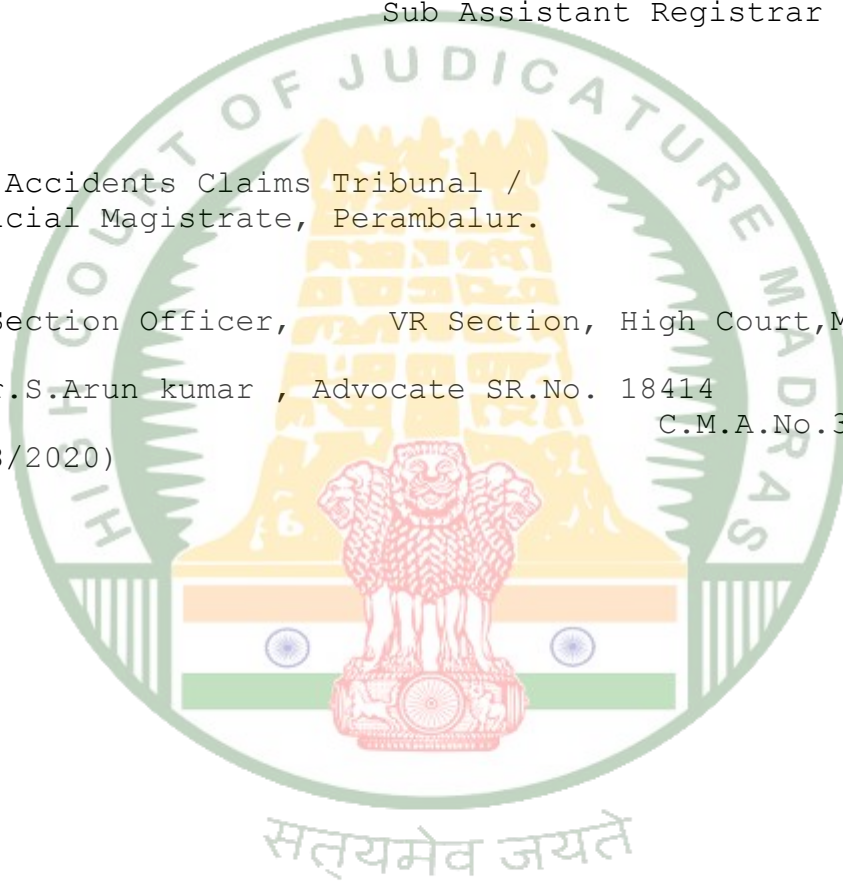
Copy to:

The Section Officer, VR Section, High Court, Madras.

+1cc to Mr.S.Arun kumar , Advocate SR.No. 18414

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A.SK(27/08/2020)



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