

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.08.2020

CORAM:

THE HON'BLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A.NO.2887 OF 2013

1.Govindasamy (Died)

2.Loganayaki

3.Uma Maheswari

(Appellants 2 & 3 brought on record as
Lrs of the deceased sole Appellant vide
order of this Court dated 21.07.20 made
in CMP.Nos.1259, 1260 & 1263/19)

...Appellants/Petitioners

vs.

1. G.Rajeshkumar

2. The Oriental Insurance Company Ltd.,
No.3, L.Siddhaveerappa Chetty Street,
Dharmapuri - 636 701.

...Respondents/Respondents

Prayer:

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the decree and judgment dated 13.08.2012 made in M.C.O.P.No.69 of 2011 on the file of the Motor Accidents Claims Tribunal (Additional District Judge) Dharmapuri.

For Appellants : Mr.M.Sivakumar
For Respondents : R1 - Left
Mr.E.Rajadurai for
M/s.N.Vijayaraghavan for R2

JUDGMENT

(This appeal was heard through the Video Conferencing)

This appeal has been filed by the claimant challenging the dismissal of his claim on 13.08.2012 by a Judgment and Decree passed by the Motor Accident Claims Tribunal (Additional District Judge) Dharmapuri in M.C.O.P.No.69 of 2011.

2.Heard Mr.M.Sivakumar, learned counsel for the Appellants and Mr.E.Rajadurai, learned counsel for the second respondent.

3.It is the case of the Appellants/claimants that Govindasamy sustained injuries as a result of an accident on 27.02.2009 while he was travelling as a pillion rider in the motorcycle bearing Registration No.TN 29 AB 7593. According to Govindasamy, as seen from the claim petition at about 4.30 p.m. on 27.02.2009 in Dharmapuri, Senthilnagar, Annai Therasa Theru in front of Pandarinathan's house, the rider of the motorcycle drove the vehicle in a rash and negligent manner and due to the said reason, the rider lost his control and the motorcycle fell into a ditch and due to the sudden impact, he fell down from the motorcycle and he sustained fractures in his right leg and his right hip and also sustained injuries all over his body.

4.It is also the case of the Appellants/claimants that Govindasamy was admitted in Ganga Medical Centre as inpatient between 27.02.2009 and 12.03.2009. According to them, Bipolar Hemiarthroplasty was done on his right hip and till the date of filing of the claim petition, he was taking continuous treatment. Mr.Govindasamy preferred a claim before the Motor Accident Claims Tribunal against the respondents in M.C.O.P.No.69 of 2011 seeking compensation of Rs.20,00,000/-.

5.The Tribunal under the impugned judgment and decree dated 13.08.2012 passed in M.C.O.P.No.69 of 2011, dismissed the claim of Mr.Govindasamy on the ground that based on the evidence available on record, it has been found that no accident happened on 27.02.2009 as alleged by the Appellants/claimants. The Tribunal under the impugned judgment and decree has relied upon the closure report of FIR filed by the Police which was marked as Ex.R1 and also the oral evidences of RW1 and RW2. RW1, who is the SI of Police has himself deposed that Ex.R1-charge sheet that has been registered against the rider of the motorcycle has been closed by the Police since no accident took place on 27.02.2009 as alleged by Mr.Govindasamy.

6.The Tribunal has also observed in the impugned judgment and decree that the alleged accident is said to have happened in broad day light. It could not be possible there were no eye witnesses. However, the Appellant/claimants have not examined any eye witness despite the fact that the accident happened in broad day light in a residential area and many people would have witnessed the accident. However, the Appellants/claimants have not examined any eye witness to the accident and based upon the closure report submitted by the Police as seen from Ex.R1, the Tribunal has rightly rejected the claim of the Appellants/claimants. As rightly observed by the Tribunal under the impugned judgment and decree, the respondents have conclusively

established before the Tribunal through Ex.R1 and the depositions of RW1 and RW2 that no accident took place on 27.02.2009 as alleged by the Appellants/claimants. The Appellants/claimants have also not challenged the closure report Ex.R1 before any Court of law.

7.For the foregoing reasons, this Court does not find any infirmity in the findings of the Tribunal. Accordingly, there is no merit in this appeal and the appeal shall stand dismissed. No costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

pam

To

1. The Motor Accidents Claims Tribunal,
(Additional District Judge) Dharmapuri.
2. The Section Officer,
Vernacular Section,
Madras High Court.

+1cc to Mr.C.Prabakaran, Advocate, S.R.No.26197

C.M.A.No.2887 of 2013

SJ(CO)
CS/01/02/2021