

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.12.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.298 of 2013

1.Mohamed Sahirutheen

2.Sarina Banu

3.Mohamed Juprudeen

4.Dilshath Banu

5.Dusleek Banu

.. Appellants

1.B. Sumathi

2.The Oriental Insurance Co. Ltd.,

179, Easwaran Koil Street,

Pondicherry.

3.Sairabanu

.. Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 28.10.2004, made in M.C.O.P. No.566 of 2002, on the file of the Fast Track Court No.II, (Motor Accident Claims Tribunal), Tindivanam.

For Appellants : Mr. T. Dhanyakumar

For Respondents : Mr. K. Vinod (For R2)
for M/s. Elveera Ravindran

J U D G M E N T

This matter is heard through "Video Conferencing".

This Civil Miscellaneous Appeal has been filed against the order of dismissal dated 28.10.2004, made in M.C.O.P. No.566 of 2002, on the file of the Fast Track Court No.II, (Motor Accident Claims Tribunal), Tindivanam

2.Originally, the appellants along with Shayannisha/1st claimant and 3rd respondent, filed M.C.O.P. No.566 of 2002, on the file of the Fast Track Court No.II, (Motor Accident Claims Tribunal), Tindivanam, claiming a sum

of Rs.3,00,000/- as compensation for the death of one Suprudeen, who died in the accident that took place on 12.10.1999. Pending claim petition, the 1st claimant/Shayannisha died.

3. According to the appellants and the 3rd respondent, on the date of accident, at 23.30 hrs, when the deceased was walking towards GST Road, near Divisional Engineer's Office, the driver of a Car bearing Registration No. TNCV-418 belonging to the 1st respondent, drove the same in a high speed in a rash and negligent manner and dashed against the deceased and caused the accident. The accident occurred due to rash and negligent driving by the driver of the Car belonging to the 1st respondent. In the accident, the deceased sustained fatal injuries. Hence, the appellant along with 1st claimant and 3rd respondent, filed the claim petition, claiming compensation against the respondents as owner and insurer of the said Car.

4. The 1st respondent remained exparte before the Tribunal.

5.The 2nd respondent - Insurance Company filed counter statement and denied all the averments made by the appellants. According to the 2nd respondent, the accident did not occur due to rash and negligent driving by the driver of the Car belonging to the 1st respondent. The appellants and 3rd respondent have to prove that the driver of the Car possessed valid Driving License, Registration Certificate, Permit and Fitness Certificate to ply the vehicle, at the time of accident. In any event, the appellants and 3rd respondent have to prove the age, avocation and income, injuries sustained in the accident and treatment taken by the deceased, to claim compensation. The total compensation claimed by the appellants and 3rd respondent is excessive and prayed for dismissal of the claim petition.

6.Before the Tribunal, the 3rd appellant examined himself as P.W.1 and examined eye witness as P.W.2 and marked 3 documents as Exs.A1 to A3. The respondents 1 and 2 did not let in any oral and documentary evidence.

7.The Tribunal considering the pleadings, oral and documentary evidence, dismissed the claim petition, holding that the appellants and 3rd respondent failed to prove that the accident occurred only due to rash and negligent driving by the driver of the Car belonging to the 1st respondent and also failed to produce legal heirship certificate to prove that they are the legal heirs of the deceased Suprudeen.

8.Challenging the order of dismissal dated 28.10.2004, made in M.C.O.P. No.566 of 2002, the appellants have come out with the present appeal.

9.The learned counsel appearing for the appellants contended that the Tribunal failed to note in Ex.A2 - Motor Vehicle Inspector's Report, it has been mentioned that the Car bearing Registration No.TCV-418 was involved in the accident. The Tribunal failed to consider the evidence of P.W.2, who has deposed that vehicle involved in the accident was only Ambassador Car. The Tribunal erred in holding that the appellants failed to produce legal

heirship certificate in respect of death of 1st claimant. The mother of the appellants who filed claim petition produced the legal heirship certificate. The Tribunal ought to have awarded compensation to the appellants when the respondents 1 and 2 have not denied the accident and prayed for allowing the appeal.

10.Learned counsel appearing for the 2nd respondent-Insurance Company made submissions in support of the award passed by the Tribunal and prayed for dismissal of the appeal.

11.Heard learned counsel appearing for the appellants as well as the 2nd respondent-Insurance Company and perused the materials available on record.

12.It is the contention of the appellants that while the deceased was walking on the road, the Car belonging to the 1st respondent driven in a rash and negligent manner, dashed against the deceased and he died due to the injuries. To substantiate the case, 3rd appellant was examined as P.W.1 and one Karnan was examined as P.W.2. They also marked FIR as Ex.A1. The Tribunal considered

the FIR which was registered based on the complaint given by one Moorthy. From the award of the Tribunal, it is seen that the complainant has stated that accident has occurred due to involvement of unknown vehicle. After a month of accident, the Car belonging to the 1st respondent was inspected by the Motor Vehicle Inspector. There is nothing on record to show that how Car belonging to the 1st respondent was sent for inspection. No charge sheet was filed and no criminal case was initiated. The appellants failed to examine the complainant Moorthy. Though they have examined P.W.2, the alleged eye witness. He has not given any complaint and he was not examined by the Police. After 5 years, the said P.W.2 deposed that the Car belonging to the 1st respondent bearing Registration No. TCV-418 dashed against the deceased. He admitted in cross examination that accident occurred in the middle of the road and he did not know how the deceased went to the middle of the road at the time of accident. The Tribunal considering all the materials placed before it, did not accept the evidence of P.W.2 and held that appellants failed to prove that Car bearing Registration No. TCV-418 belonging to the 1st respondent was involved in the accident. There is no error in the award of the Tribunal warranting interference by this Court.

13.In the result, the appeal is dismissed. No costs.

21.12.2020

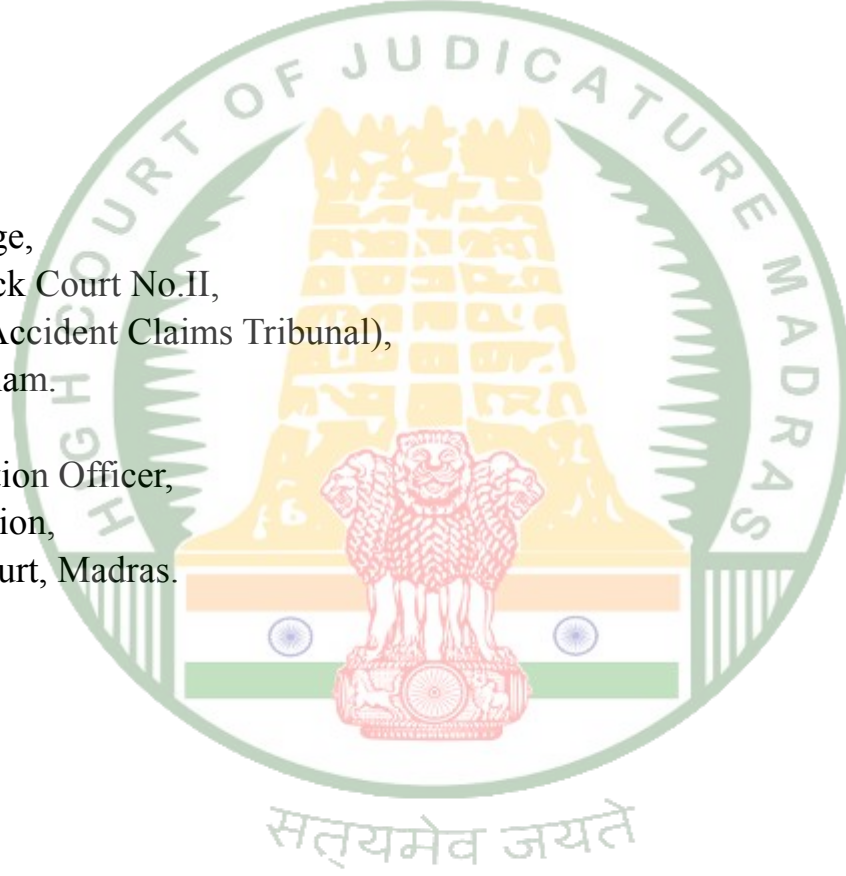
Index : Yes / No

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To

1.The Judge,
Fast Track Court No.II,
(Motor Accident Claims Tribunal),
Tindivanam.

2.The Section Officer,
V.R Section,
High Court, Madras.

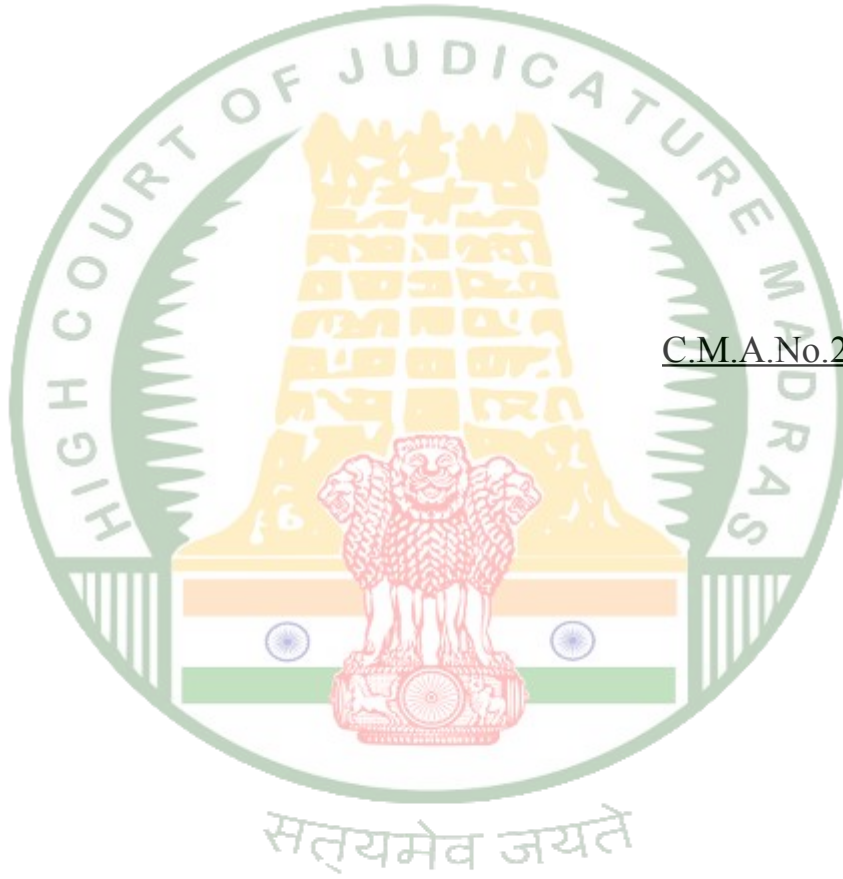


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