

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.12.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.535 of 2013

Jeyalakshmi

.. Appellant/Petitioner

Vs.

1.N.Manickavelu

2.The Divisional Manager,
United India Insurance Company Limited,
Jawaharlal Nehru Street,
Pondicherry - 1.

.. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the award dated 20.07.2007 made in MACTOP.No.1306 of 2003 on the file of the Motor Accident Claims Tribunal, Principal District Court, Puducherry.

For Appellant : Ms.Ramya V.Rao
for Mr.A.N.Viswanatha Rao

For R2 : Ms.R.Rathna Thara

R1 : Left

J U D G M E N T

The matter is heard through "Video Conferencing".

2.This Civil Miscellaneous Appeal has been filed against the order of dismissal dated 20.07.2007 made in M.C.O.P.No.1306 of 2003 on the file of the Motor Accident Claims Tribunal, Principal District Court, Puducherry.

3.The appellant is the claimant in M.C.O.P.No.1306 of 2003 on the file of the Motor Accident Claims Tribunal, Principal District Court, Puducherry. She along with her husband Chandrasegaran filed the above said claim petition, claiming a sum of Rs.10,00,000/- as compensation for the death of one Manimaran who died in the accident that took place on 10.09.2000. Pending claim petition, the said Chandrasegaran died.

4. According to appellant, on 10.09.2000 at about 00.05 hours, while the deceased was riding his motorcycle bearing Registration No.PY 01 L 2682 at Nellithope, near Thatcher Street - Madha Koil Street junction, the driver of the mini van bearing Registration No.PYT 1490 belonging to 1st respondent drove the same in a rash and negligent manner and dashed against the motorcycle rode by the deceased and caused the accident. In the accident, the said Manimaran sustained severe head injuries and then he was taken to Government General Hospital, Pondicherry and thereafter he was shifted to JIPMER Hospital, Pondicherry. Further he was taken to Government Hospital, Madras for further treatment. In spite of treatment, the said Manimaran succumbed to injuries on 14.09.2000. Therefore, the appellant filed the above said claim petition claiming a sum of Rs.10,00,000/- as compensation against the respondents being the owner and insurer of the mini lorry respectively.

5. The 1st respondent-owner of the mini lorry remained exparte before the Tribunal.

6. The 2nd respondent-Insurance Company filed counter statement and denied all the averments made by the appellant. According to the 2nd respondent, the accident has not occurred as alleged by the appellant involving the 1st respondent's mini van. Hence, the 2nd respondent is not liable to pay any compensation to the appellant. The deceased Manimaran got injuries on 10.09.2000 in an accident involving his own motorcycle and the claim of the appellant that the deceased Manimaran sustained injuries involving the 1st respondent's mini van is not correct. The 1st respondent, along with his driver and the Police officials have connived together in raising a false claim. The complaint was lodged after 4 days of the accident and appellant has not explained the delay. The F.I.R. was registered under Section 174 of the C.P.C. and later the Section was altered to under Section 304-A of I.P.C. only on 04.12.2000. There was a delay of about three months in implicating the 1st respondent's mini van. This shows that the 1st respondent's mini van was not involved in the accident. The accident has not occurred due to the negligence on the part of the driver of the 1st respondent's mini van. The deceased only rode his motorcycle under the influence of alcohol without ascertaining as to any vehicle was coming and without showing any signal, suddenly attempted to cross the junction road, recklessly without noticing the van bearing Registration No.PYT 1490 which was coming on the said road. The deceased only fell down on the road, sustained injuries and died. Therefore, there was no negligence on the part of the driver of the 1st respondent's van and the accident has occurred only due to negligence on the part of the deceased. The driver of the 1st respondent's van was not possessing valid driving license at the time of accident and the appellant has to

prove that the 1st respondent's mini van was insured with the 2nd respondent at the time of accident. The appellant has to prove that she is the legal heir of the deceased by producing valid documents. The appellant has to prove the age, avocation and income of the deceased by producing valid documents. In any event, the quantum of compensation claimed by the appellant is highly excessive and prayed for dismissal of the claim petition.

7. Before the Tribunal, the appellant examined herself as P.W.1, one Palanivel, eyewitness to the accident was examined as P.W.2 and one Salim, Manager of South Eastern Freight Carriers was examined as P.W.3 and 10 documents were marked as Exs.A1 to A10. On behalf of the 2nd respondent-Insurance Company, one Radjacoumar, Sub-Inspector of Police, Orleanpet Police Station was examined as R.W.1 and no document was marked.

8. The Tribunal considering the pleadings, oral and documentary evidence, dismissed the claim petition on the ground that the appellant failed to prove accident has occurred only due to the negligence on the part of the driver of the vehicle belonging to 1st respondent.

9. Against the said order of dismissal dated 20.07.2007 made in M.C.O.P.No.1306 of 2003, the appellant has come out with the present appeal for granting compensation.

10. The learned counsel appearing for the appellant contended that the Tribunal ought to have considered the evidence of P.W.2 and R.W.1 in proper perspective and fixed negligence on the part of the driver of the mini van belonging to 1st respondent. The driver of the mini van admitted his guilt before the Criminal Court and paid fine. The respondents have not examined the driver of the mini van and in the absence of any contra evidence, the Tribunal ought to have fixed the negligence on the part of the driver of the mini van. The appellant also raised various grounds with regard to quantum of compensation and prayed for allowing the appeal.

11. The learned counsel appearing for the 2nd respondent-Insurance Company made her submissions supporting the award passed by the Tribunal and prayed for dismissal of the appeal.

12. Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the 2nd respondent and perused the entire materials on record.

13. From the materials available on record, it is seen that it is the contention of the appellant that while her son Manimaran, was riding the motorcycle at 00.05 hours on 10.09.2000, the driver of the 1st respondent's mini van drove the

same in a rash and negligent manner and dashed against the motorcycle rode by the deceased and caused the accident. In spite of treatment, her son died due to the injuries sustained in the accident. In support of her case, the appellant examined herself as P.W.1 and one Palanivel as P.W.2 and marked F.I.R. as Ex.A1. On the other hand, it is the case of the 2nd respondent that mini van belonging to 1st respondent was not involved in the accident. The appellant in collusion with 1st respondent and Police, falsely implicated the mini van and fixed negligence on the part of the driver of the mini van. To substantiate their case, they examined the Sub-Inspector of Police, Orleanpet Police Station as R.W.1. R.W.1 deposed that originally F.I.R. was registered under Section 174 of Cr.P.C. After examining the complainant Ilangovan and his brother Kamaraj, altered the Section to 304-A of I.P.C. The complaint was given by one Ilangovan after four days of the accident. In the complaint, the said Ilangovan has not stated about involvement of the mini van belonging to 1st respondent and Registration Number of the mini van. According to R.W.1, after examining the said Ilangovan and his brother Kamaraj, altered the Section to 304-A I.P.C. R.W.1 has not produced the statements of Ilangovan and his brother Kamaraj based on which he altered the Section to 304-A I.P.C. There is no particulars of the vehicle involved in the accident and as to when he came to know about the involvement of the vehicle belonging to 1st respondent.

14. It is admitted that driver of the vehicle belonging to 1st respondent was residing in the next street where the deceased was residing. The appellant examined P.W.2, the alleged eyewitness. P.W.2 in his cross examination has stated that vehicle involved in the accident was a van, but in the cross examination he has stated that vehicle involved in the accident is a mini lorry with open body and its colour is blue. There are series of contradictions in the evidence of P.W.2 with regard to manner of accident and the vehicle. Further P.W.2 has not stated as to why he has not given any complaint to the Police. P.W.2 deposed that he was examined by the Police only after one week from the date of accident. If really he was examined one week after the date of accident, there is no explanation from the Police as to why the Section 174 of Cr.P.C. was altered to Section 304-A of I.P.C. after three months. The evidence of P.W.2 is not reliable and his evidence does not correlate with the materials on record. The contention of the learned counsel appearing for the appellant that driver of the 1st respondent admitted his guilt in the Criminal Proceedings and paid fine and therefore, the driver of the mini van belonging to 1st respondent was responsible for the accident is without merits. The Tribunal is not bound by the Criminal Proceedings and judgments in the Criminal Court. The Tribunal has to appreciate the materials placed before it to come to the conclusion with regard to

negligence. The Tribunal can consider the Criminal Proceedings and judgments along with other materials placed before it for fixing negligence. In the present case, the appellant has not produced any material to show that driver was prosecuted, pleaded guilty and paid fine. The Tribunal considering all the materials placed before it in proper perspective, has held that there was no evidence to prove the accident and also to link the vehicle belonging to 1st respondent with the accident as offending vehicle and dismissed the claim petition. There is no error in the said finding of the Tribunal warranting interference by this Court.

15. In the result, this Civil Miscellaneous Appeal is dismissed confirming the award dated 20.07.2007 made in M.C.O.P.No.1306 of 2003. No costs.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1. The Principal District Judge,
Motor Accident Claims Tribunal,
Puducherry.

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

+1 CC to Mr.A.N.Viswanatha Rao, Advocate sr 42662.

+1 CC to Mr.R. Rathna Thara, Advocate sr 42960.

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PM(CO)
SP(02/02/2021)