

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.08.2020

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.3552 of 2014

1.Umarani

2.Minor Nivedhasri

(Rep. by N/F Guardian Mother Smt.Umarani)

...Appellants/ Petitioners

vs.

1.D.Neelaveni

2.M/s.The Reliance General Insurance Company Limited,
Sri Lakshmi Complex 1st floor, Bharati Street,
Omalar Main Road, Swarnapuri, Salem - 4.

(The first respondent set exparte)

...Respondents/ Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the award and decree dated 28.03.2014 made in M.C.O.P.No.900 of 2011 on the file of the Motor Accidents Claims Tribunal, Special District Court, Salem.

For Appellant : M/s.A.L.Gandhimathi

For Respondents : R1 - exparte

Mr.S.Arun Kumar for R2

JUDGMENT

(This appeal was heard through the Video Conferencing)

This appeal has been filed by the Appellants challenging the Award dated 28.03.2014 passed by the Motor Accident Claims Tribunal, Special District Court, Salem, in M.C.O.P.No.900 of 2011.

2.Heard Ms.AL.Gandhimathi, learned counsel for the Appellants and Mr.S.Arun Kumar, learned counsel for the second respondent. The first respondent has remained exparte both before the Tribunal as well as this Court.

3.The claim filed by the Appellants in M.C.O.P.No.900 of 2011 seeking compensation for the death of Manickam was

dismissed by the Tribunal under the impugned Award on the ground that it was a hit and run accident. Aggrieved by the said finding, this appeal has been filed.

4. Apart from the Appellant, it is brought to the notice of this Court by the respondents counsel that in connected appeals in CMA.Nos.29 to 34 of 2015 involving the same accident in respect of other claimants, a learned Single Judge of this court dismissed the said appeals on 20.01.2020 and confirmed the findings of the Tribunal that the accident was a hit and run case. The grounds raised in this appeal are identical to the ones raised in the connected appeals CMA Nos.29 to 34 of 2015. The learned counsel for the respondents in particular drew the attention of this Court to paragraph No.13 of the judgment dated 20.01.2020 passed in CMA Nos.29 to 34 of 2015, which is extracted hereunder:

"13. It is the contention of the claimants in the claim petitions that the accident has occurred when an unknown vehicle dashed against the omni van. F.I.R. is registered only against the driver of the unknown vehicle. The complaint was lodged by one Jeyashree, who is the claimant in M.C.O.P.No.902 of 2011 as well as appellant in C.M.A.No.34 of 2015 and one of the occupants of the omni van at the time of accident. In the claim petitions also, the claimants have stated that the accident has occurred due to rash and negligent driving by unknown vehicle. The claimants have not filed any objections to the contents of F.I.R. and have not lodged any complaint alleging that the accident has occurred only due to rash and negligent driving by the driver of the omni van. The Tribunal considering the averments in the claim petitions as well as contents in Ex.P1/F.I.R., held that the accident has occurred only due to rash and negligent driving by driver of unknown vehicle and it is the case of hit and run. In view of the above findings, the Tribunal dismissed the claim petitions holding that the claimants are entitled to compensation only under the provisions of Hit and Run case and the application has to be filed only under Section 161 of the Motor Vehicles Act, 1988. There is no error in the said finding of the Tribunal warranting interference by this Court."

5. In the instant case also, the deceased Manickam was travelling in an Omni Van on Athur - Kallakurichi Main Road and an unknown vehicle came in a rash and negligent manner dashed against the said Omni Van which resulted in the death of Manickam. The Appellants in this appeal are the wife and the minor daughter of the deceased and are his legal representatives.

6.The Appellants in the connected appeals in CMA Nos.29 to 34 of 2015 were also travelling in the same Omni Van who are the claimants in the connected MCOPs before the same Tribunal.

7.This Court has duly considered the judgment passed by a Co-ordinate Bench of this Court on 20.01.2020 in CMA Nos.29 to 34 of 2015 which involve the same accident. This Court is in agreement with the observations /findings recorded in the said judgment.

8.In view of the same, it has been conclusively established by the second respondent Insurance Company that the claim made by the Appellants before the Tribunal is unsustainable as the accident is a hit and run case.

9.For the foregoing reasons, as in the case of connected appeals in CMA No.29 to 34 of 2015, this appeal namely, CMA No.3552 of 2014 also does not deserve any merit. Accordingly, this appeal is also dismissed. No costs.

10.As was done in the case of CMA Nos.29 to 34 of 2015, this Court also grants liberty to the Appellants also to file an application under Section 161 of the Motor Vehicles Act.

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

pam

To

1.The Motor Accidents Claims Tribunal,
Special District Court, Salem.

Copy to:

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

+1cc to M/s.A.L.Gandhimathi, Advocate SR.No. 26696

A.SK(20.05.2021)

C.M.A.No.3552 of 2014