

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.02.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.3060 of 2017

1.S.Nabeesa Begum

2.Minor.Shithik

(2nd Minor represented by his mother
and guardian 1st appellant herein
S.Nabeesa Begum, amended as per order
in I.A.No.528 of 2017 dated 13.07.2017)

3.Jamila Bebee .. Appellants/Claimants

Vs.

1.P.Ramesh

2.United India Insurance Co.Ltd.,
No.48, Arcot Road, Saligramam,
Chennai-93.

.. Respondents /Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 07.06.2016 in M.C.O.P.No.547 of 2011 on the file of the Motor Accident Claims Tribunal, II Additional District Court, Poonamallee.

For Appellants : Mr.K.Varadha Kamaraj
For R2 : Mr.S.Arunkumar

J U D G M E N T

The Civil Miscellaneous Appeal has been filed by the appellants seeking enhancement of compensation granted by the Tribunal in the award dated 07.06.2016 in M.C.O.P.No.547 of 2011 on the file of the Motor Accident Claims Tribunal, II Additional District Court, Poonamallee.

2.The appellants are claimants in M.C.O.P.No.547 of 2011 on the file of the Motor Accident Claims Tribunal, II Additional District Court, Poonamallee. They filed the said claim petition claiming a sum of Rs.10,00,000/- as compensation for the death of one Shiek, who died in the accident that took place on 22.05.2011.

3. According to the appellants on 22.05.2011 at 11.30 p.m. the deceased was crossing the road in the G.S.T road opposite to Kadaperi Valluvar Gurukulam Matriculation School from West to East at the level crossing. At that time, a Bajaj Auto bearing Regn.No.TN-01-R-7864 which came from Guindy to Tambaram in a high speed suddenly dashed against the deceased who was crossing the road at the level crossing. Due to the impact, the deceased fell down in the road and sustained head injury and admitted in G.H and died in the hospital. The accident occurred only due to the rash and negligent driving by the driver of the 1st respondent. Hence, the appellants filed claim petition before the Tribunal claiming compensation against the respondents.

4. The Insurance Company/2nd respondent has filed a counter statement, stating that on investigation, it reveals that the deceased was hit by an unknown car which came in a rash and negligent manner and went off without halt and it is a hit and run case. However, the claimants have colluded with 1st respondent's driver who is their relative and filed a false complaint and thereafter filed the claim petition for illegal gain. The age and income of the deceased have to be proved. In any event, the amount claimed by the appellants as compensation is highly excessive and prayed for dismissal of the petition.

5. The 1st respondent remained ex-parte before the Tribunal.

6. Before the Tribunal, the 1st appellant/wife of the deceased examined herself as P.W.1, one Chinna was examined as P.W.2, one Syed Mohideen was examined as P.W.3, one R.Sidharthan was examined as P.W.4 and marked seven documents as Exs.P1 to P7. On the side of the 2nd respondent, one Kamaraj was examined as R.W.1 and marked one document as Ex.R1.

7. The Tribunal, considering the pleadings, oral and documentary evidence, dismissed the claim petition holding that the appellants have not established the fact the deceased was hit by auto belonging to the 1st respondent and that it was hit and run case where the deceased was hit by a car and after the accident the car went off without halt.

8. Against the order of dismissal passed by the Tribunal, the appellants have come forward with the present appeal.

9. The learned counsel for the appellants contended that the Tribunal erred in relying Ex.R1/accident register copy over looking the evidence of P.W.2 and P.W.3, Ex.P1/F.I.R, and evidence of Inspector of Police who was examined as P.W.4. The Tribunal erred in concluding that the deceased was hit by car relying on Ex.R1/accident register copy when the doctor who recorded same was not examined before the Tribunal. The Tribunal

failed to see that the 1st respondent did not deny the involvement of his Auto. The Tribunal ought to have allowed the claim petition and granted compensation and prayed for setting aside the award of the Tribunal and for granting compensation.

10. Per contra, the learned counsel appearing for the 2nd respondent/Insurance Company would submit that the Tribunal having considered the oral and documentary evidence has categorically held that the claimants have not proved their case that the deceased was hit by the auto belonging to the 1st respondent so as to fasten the liability on the 2nd respondent. Therefore, there is no error in the order of the Tribunal to interfere with the same and sought for dismissal of the appeal.

11. Heard the learned counsel appearing for the appellants as well as the second respondent and perused the materials available on record.

12. It is the case of the appellants that while the deceased was crossing the road, an Auto belonging to 1st respondent driven in a rash and negligent manner dashed against the deceased who died due to the injuries sustained by him in the accident. To substantiate this contention, they examined P.W.2, P.W.3/eye witnesses and marked F.I.R as Ex.P1. They also examined Inspector of Police as P.W.4. On the other hand, it is the case of the 2nd respondent/Insurance Company that Auto belonging to 1st respondent was not at all involved in the accident and the deceased was hit by a car while he was crossing the road and the said car did not stop after the accident.

13. To prove the said contention, the 2nd respondent examined one Kamaraj, who is an official from 2nd respondent as R.W.1 and marked accident register as Ex.R1. In the accident register, it is seen that P.W.3 who is the brother-in-law of the deceased has taken the deceased to the hospital and informed the duty medical officer that the deceased suffered injuries when a car hit him. In Ex.R1, it is recorded as "RTA pedestrian vs. car on 22.05.2011 at 11.45 p.m." It is also mentioned that P.W.3/brother-in-law brought the deceased to the hospital. F.I.R was registered on 23.05.2011 at 03.30 a.m. on the complaint given by P.W.2. In the F.I.R, it is mentioned that "the driver of the auto bearing Regn.No.TN-01-R-7864 dashed against the deceased and caused the accident". There is a contradiction between accident register and F.I.R. P.W.3 who took the deceased to the hospital admitted in his cross examination that only as per the information given by him, it is recorded by the doctor in the accident register that the deceased was hit by car. He did not depose that he informed the doctor that the deceased was hit by auto but the same was wrongly recorded as deceased was hit by car. Further, P.W.2 in his cross examination

deposed that he did not give complaint. The Tribunal considered the above materials in proper perspective and by giving reasons dismissed the claim petition. The Tribunal has rightly held that the claimants have not proved the case that the deceased was hit by auto. There is no error in the said finding warranting interference by this Court.

14.In the result, this Civil Miscellaneous Appeal is dismissed confirming the order dated 07.06.2016 made in M.C.O.P.No.547 of 2011. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

gbi

To

1.The II Additional District Judge,
Motor Accident Claims Tribunal,
Poonamallee.

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

+1cc to Mr.K.Varadhakamaraj, Advocate, S.R.No.12265
+1cc to Mr.S.Arunkumar, Advocate, S.R.No.12514

C.M.A.No.3060 of 2017

RSV(CO)
GN(15/12/2020)

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