

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.02.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.3123 of 2017

1.Mohamed Meeran

2.Jennath Nisha

..Appellants/ Petitioners

Vs.

1.A.Mohan

2.United India Insurance Company Ltd.,
Sillingi Building, New No.134,
Greams Road, Chennai-6.

..Respondents / Respondents

(1st respondent remained exparte before the Tribunal)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 28.04.2015 made in M.C.O.P.No.275 of 2012 on the file of the Motor Accident Claims Tribunal, III Judge, Small Causes Court, Chennai.

For Appellants : Mrs.Ramya V.Rao

For Respondents : Mr.S.Arunkumar for R2
R1: Exparte

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the award dated 28.04.2015 made in M.C.O.P.No.275 of 2012 on the file of the Motor Accident Claims Tribunal, III Judge, Small Causes Court, Chennai.

2. The appellants are the claimants in M.C.O.P.No.275 of 2012 on the file of the Motor Accident Claims Tribunal, III Judge, Small Causes Court, Chennai. They filed the above said claim petition, claiming a sum of Rs.10,00,000/- as compensation for the death of one M.Shagul Hameed, who died in the accident that took place on 13.11.2011.

3. According to the appellants, on the date of accident i.e., on 13.11.2011 at about 22.30 hours, while the deceased was riding the motorcycle near Railway Overbridge roundana, Avadi, N.M.Road, Opposite to MLA office, an unknown vehicle came in a

rash and negligent manner and hit against the motorcycle and caused the accident. Due to the accident, the deceased fell down, sustained fatal injuries and died on the spot. Therefore, the appellants have filed the claim petition claiming compensation against the respondents.

4.The first respondent remained exparte before the Tribunal.

5.The second respondent-Insurance Company filed counter statement and denied all the averments made by the claimants. According to the second respondent, the accident has happened only due to rash and negligent driving of an unknown vehicle. Hence, the second respondent-Insurance Company has nothing to do with the claim petition. The appellants have to produce legal heirship certificate to prove that they are the dependants of the deceased. The appellants have mentioned in the claim petition that Police had registered a case against the driver of the unknown vehicle and there is no negligence on the part of the rider of the motorcycle belonging to the first respondent. Hence, the second respondent-Insurance Company is not liable to pay any compensation to the appellants. The appellants are entitled to compensation only under the provision of Hit and Run case and the applications have to be filed under Section 161 of the Motor Vehicles Act, 1988. In any event, the total compensation claimed by the appellants are highly excessive. The appellants are not entitled to any amounts as they claimed for and prayed for dismissal of the claim petitions.

6.Before the Tribunal, on behalf of the appellants, the second appellant examined herself as P.W.1, one Abdul Kadhar was examined as P.W.2 and 6 documents were marked as Exs.P1 to P6. On behalf of the respondents, one Murugesan was examined as R.W.1 and two documents were marked as Exs.R1 and R2.

7.The Tribunal considering the pleadings, oral and documentary evidence, dismissed the claim petition holding that the claimants are not entitled to get compensation from the respondents for the accident that has occurred due to rash and negligent driving by an unknown vehicle.

8.Challenging the order of dismissal dated 28.04.2015 made in M.C.O.P.No.275 of 2012, the appellants have come out with the present appeal.

9.The learned counsel appearing for the appellants contended that the Tribunal, without appreciating the materials on fact placed before it had dismissed the claim petition. The claim petition is filed under Section 163(A) of Motor Vehicles Act. Even though, the Tribunal referred to the judgment relied on by the learned counsel for the appellants, without there being any

reason to differ from the judgment, erroneously dismissed the claim petition. As per Section 163(A), the appellants are not required to prove the negligence. The Tribunal ought to have sympathetically considered the claim petition filed by the parents of the deceased, who have lost their 20 years old son in the accident and prayed for allowing this appeal and for granting compensation.

10.Per contra, Mr.S.Arunkumar, learned counsel appearing for the second respondent-Insurance Company contended that the Tribunal rightly relying on Ex.P1/F.I.R. dismissed the claim petition and the appellants are not entitled to any amounts as claimed for and prayed for dismissal of the appeal.

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

12.It is the contention of the appellants that while deceased was riding the motorcycle bearing Registration No.TN 02 AF 1040, near Railway Overbridge roundana, Avadi, N.M.Road, Opposite to MLA office, the driver of the unknown vehicle drove the same in a rash and negligent manner and hit the motorcycle, driven by the deceased. Due to the said impact, the deceased fell down and sustained fatal injuries and died on the spot. From the above materials, as pleaded by the appellants, it is clear that it is the case of hit and run. The accident has not occurred due to the negligence on the part of the deceased involving the vehicle belonging to the first respondent and insured with the second respondent. When a claim petition is filed under Section 163(A), the claimants need not prove the negligence and it is not open to the owner of the vehicle or insurance company to plead the negligence on the part of the claimants or legal heirs of the deceased. Section 163(A) is not applicable to the facts of the present case as admittedly the accident has occurred by unknown vehicle. Due to this fact, the Tribunal has rightly applied the ratio in the judgment of the Hon'ble Supreme Court in the case of United India Insurance Company Vs. Sunil Kumar and another reported in 2013 STPL (Web) 867 and dismissed the claim petition. In view of the above findings, the Tribunal dismissed the claim petitions holding that the appellants are entitled to compensation only under the provisions of Hit and Run case. There is no error in the said finding of the Tribunal warranting interference by this Court.

13.In the result, this Civil Miscellaneous Appeal is

dismissed confirming the order dated 28.04.2015 made in
M.C.O.P.No.275 of 2012. No costs.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

vr
To

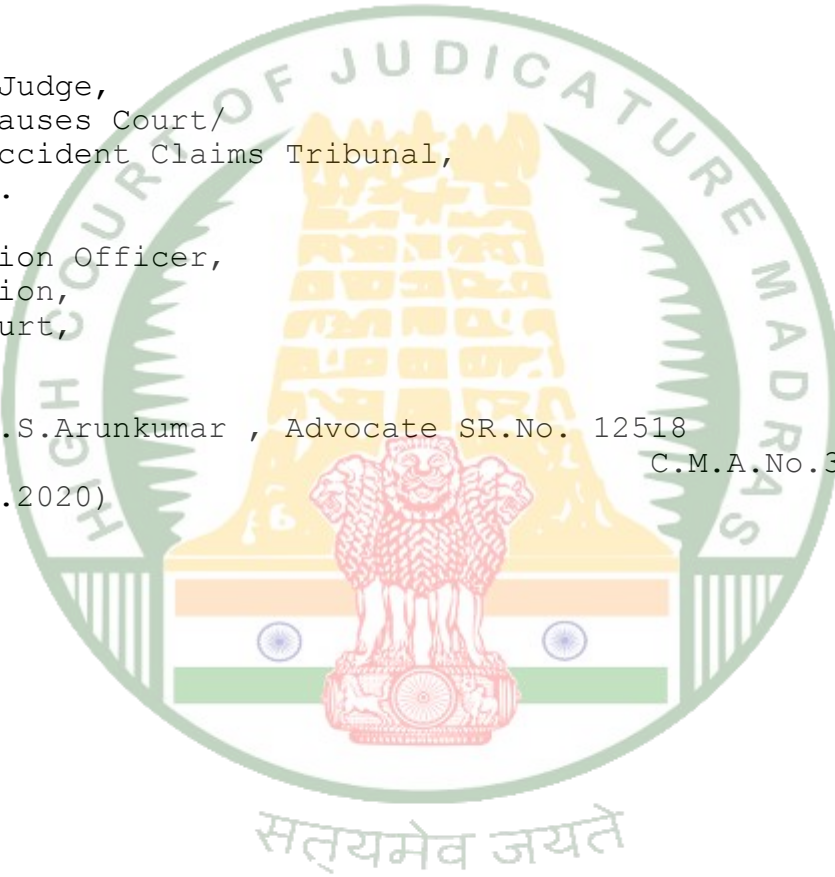
1.The III Judge,
Small Causes Court/
Motor Accident Claims Tribunal,
Chennai.

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

+1cc to Mr.S.Arunkumar , Advocate SR.No. 12518

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A.Sk(23.12.2020)



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