

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.08.2020

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.3394 of 2017

V.Vasanthi

...Appellant/Petitioner

Vs.

1. M.Velu

2. ICICI Lombard Gen Insurance Company Limited,
Chotah Bhai Centre, 2nd floor,
No.140, Nungambakam High Road,
Chennai - 34.Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 18.08.2017 made in M.C.O.P.No.6690 of 2014, on the file of the Motor Accidents Claims Tribunal, IV Judge, Small Causes Court, Chennai.

For Appellant : Mr.A.N.Viswanatha Rao

For R1 : No appearance

For R2 : Ms.R.Sree Vidhya

JUDGMENT

As against the dismissal of the claim petition in M.C.O.P.No.6690 of 2014 dated 18.08.2017 on the file of the Motor Accidents Claims Tribunal, IV Judge, Small Causes Court, Chennai, the appellant/claimant has preferred this appeal.

2.The case in brief, is as follows:

On the fateful day, i.e., on 24.08.2014, at about 15.30 hours, the deceased Udayakumar was riding the motorcycle bearing Registration No. TN 09 BF 9154 along with pillion rider, in Manapakkam, near Pillaiyar Koil Street Junction. At that time, to avoid the ditch, the deceased /rider, applied sudden brake and due to the same, the motorcycle got skid and consequently the deceased fell down on the road, sustained fatal injuries and died. The mother of the deceased, being the surviving legal heir, filed a claim petition before

the Tribunal, seeking compensation of Rs.10,00,000/-. On consideration of the materials and evidence available on record, the Tribunal held that the deceased himself was responsible for the accident and the accident had occurred due to his own negligence and accordingly dismissed the claim petition. Aggrieved by the same, this appeal came to be filed by the appellant/claimant.

3.The learned counsel for the appellant/claimant has submitted that the findings given in the judgment by the Tribunal for rejecting the claim are unsustainable in law. The Hon'ble Apex Court in National Insurance Co.Ltd. v. Sinitha, reported in (2012) 2 SCC 356 and in United India Insurance Co. Ltd. v. Sunil Kumar and another, reported in (2014) 1 SCC 680, clearly held that compensation can be awarded if the claim is made under 163(A) as the injured had only tried to avoid the accident and applied sudden brake. He also submitted that the Tribunal ought to have entertained the petition and awarded just compensation as claimed by the claimant.

4.Per contra, the learned counsel for the second respondent/ insurance company has submitted that the deceased was a tort-feasor and he himself has contributed to the alleged accident. Therefore, the Tribunal has correctly dismissed the claim petition.

5.Heard the learned counsel on either side and perused the materials available on record carefully and meticulously.

6.A perusal of Ex.P2- First Information Report reveals that the deceased along with pillion rider drove the vehicle in a rash and negligent manner and at that time, he was in inebriated condition and hence the deceased himself was responsible for the accident. It is clear that no third person had caused the accident. Ex.R1- Accident Register also clearly revealed that the deceased, at the time of accident was under the influence of alcohol, and the same was corroborated by the evidence of the Doctor who treated the deceased immediately after the accident. It is also seen from Ex.R2-final report that the FIR which was registered against the deceased was closed as charge abated. It is also seen from the deposition of RW1-Traffic Investigation Sub Inspector, St.Thomas Mount that in the place of accident, there is no ditch or speed breaker, and that it is only a residential area. From the evidence of RW1 and Ex.R1 it has been made clear that the deceased himself invited the fatal accident under the influence of alcohol. Placing reliance on those materials and evidence, the Tribunal came to the conclusion that the deceased was a tort-feasor and he is not entitled for compensation. Further it is stated in Sinitha's case that 163-A is not applicable when the deceased himself is a

tort-feasor and negligence is on his part. In the circumstances, the Tribunal has correctly dismissed the claim petition on the basis of the materials and evidence and hence, the same warrants no interference by this Court. Further, no new fact is forthcoming to assail the reasonings rendered by the Tribunal.

7.Hence, the Civil Miscellaneous Appeal is dismissed. No costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

1. The IV Judge,
The Motor Accidents Claims Tribunal,
Small Causes Court, Chennai.
- 2.The Section Officer,
VR Section, Madras High Court.

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