

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.08.2020

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.3424 of 2017

1. Kamatchi
2. Munusamy
3. Pushpa

....Appellants/Petitioners
Vs.

1. E.Suresh
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 13.09.2017 made in M.C.O.P.No.2613 of 2015, on the file of the Motor Accidents Claims Tribunal, Chief Judge, Small Causes Court, Chennai.

For Appellant : Mr.A.N.Viswanatha Rao
For R1 : Mr.A.Prabhakaran
For R2 : Ms.R.Sree Vidhya

JUDGMENT

As against the dismissal of the claim petition in M.C.O.P.No.2613 of 2015 dated 13.09.2017 on the file of the Motor Accidents Claims Tribunal, Chief Judge, Small Causes Court, Chennai, the appellants/claimants have preferred this appeal.

2.The case in brief, is as follows:

On the fateful day, i.e., on 09.06.2014, at about 05.45 hours, when the deceased M.Vinayagam was riding the motorcycle bearing Registration No.TN 22 BC 1315, belonging to the first respondent and insured with the second respondent Insurance Company, proceeding from Sabari Salai to Madipakkam, near Park Square Junction, Chennai, due to sudden crossing of a dog, the

rider of the motorcycle applied sudden brake and lost control over the vehicle. Due to the said impact, the deceased fell down on the road and sustained fatal injuries and died. The mother, father and sister of the deceased, being the surviving legal heirs, 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 appellants/claimants.

3.The learned counsel for the appellants/claimants has submitted that the entire case rests on the strength of the judgments passed by the 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 and submitted that compensation can be awarded if the claim is made under Section 163-A as the injured had applied sudden brake only to avoid the accident; that no fault liability principle is applicable in this case and that Section 163-A would cover the accident arising out of the use of motor vehicles, even if negligence is on the part of the victim. Thus, according to the learned counsel, the Tribunal ought to have entertained the claim petition and awarded just compensation as claimed by the claimants.

4.Per contra, the learned counsel for the second respondent/ insurance company has submitted that the deceased was a tort-feasor and he himself contributed to the accident, and only because of the same, the Tribunal dismissed the claim petition. Hence, the judgment of the Tribunal need not be interfered by this Court, according to the learned counsel.

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

6.A perusal of the oral evidence of PW1 and Ex.P1- First Information Report expose the fact that the deceased himself was responsible for the accident. No third person caused the accident. 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 Section 163-A is not applicable when the deceased himself is a tort-feasor and negligence is on his part. Hence, the Tribunal held that the claimants are not entitled to claim compensation and accordingly dismissed the claim petition.

7.This Court is of the view that the claim petition lodged by the claimants was not maintainable under Section 163-A of the Act, since Vinayagam/rider of the vehicle, who was responsible for the cause of the accident, cannot be considered as a third

party and that Section 163-A can be invoked only by third party and not by the rider of the vehicle or his legal heirs. Hence, there is no good reason to interfere with the finding so rendered by the Tribunal and the same is accordingly upheld.

8.In fine, this appeal stands dismissed. No costs.

Sd/-
Assistant Registrar

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Sub Assistant Registrar

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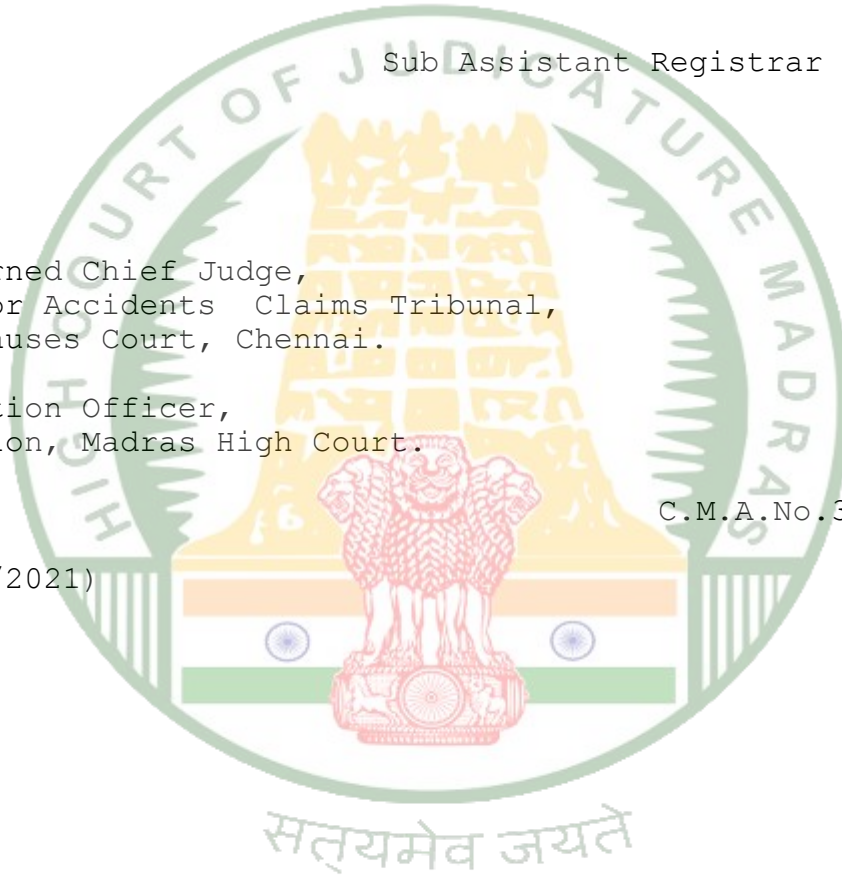
To

1.The learned Chief Judge,
The Motor Accidents Claims Tribunal,
Small Causes Court, Chennai.

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

C.M.A.No.3424 of 2017

SRA (CO)
RMP (06/05/2021)



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