

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 15.09.2020
CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.848 of 2017

1. G.Srinivasan
2. S.Santhamani

...Appellants/Petitioners

vs.

1. Venkatachalam
C/o. Duraional Engineer Highways,
Trichy High Road, Coimbatore.

2. Divisional Engineer Highways,
Trichy High Road, Coimbatore.

3. The District Collector,
Coimbatore.

....Respondents

Appeal filed under Section 173 of the Motor Vehicles Act against the Judgment and Award dated 22.09.1998 and made in M.A.C.T.O.P.No.937/94 on the file of the Motor Accident Claim Tribunal, III Additional Sub Judge, Coimbatore.

For Appellants : No appearance
For Respondents : Not ready in notice

JUDGMENT

As against the dismissal of the claim petition in M.A.C.T.O.P. No.937 of 1994 on 22.09.1998 by the learned III Additional Sub Judge, Motor Accident Claim Tribunal, Coimbatore, the appellants, who were the claimants before the Tribunal, have preferred this appeal.

2.The case in brief, is as follows:

On the fateful day, ie. on 18.07.1994 at about 7.30 p.m., the deceased Suresh Kumar was riding his bicycle, on the Kovai Avinashi Road, near Hope College. At that time, the Tractor bearing Registration No. TMP 8750 belonging to the second respondent-Department, came from the opposite direction in a rash and negligent manner and dashed against the cyclist. Due to the said impact, the deceased sustained grievous injuries and he later on, died in the hospital. The father and mother of the deceased, being the surviving legal heirs, filed a claim petition before the Tribunal, seeking compensation of

Rs.3,00,000/-. 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. Being aggrieved by the same, the present appeal came to be filed by the appellants/claimants.

3. There is no representation for the appellants either in person or through their learned counsel. Despite several opportunities granted, no steps have been taken to serve notice to the other side. Considering the paucity of time, this Court is inclined to dispose of the appeal on merits.

4. The grounds raised by the appellants herein are that the Tribunal has erred in holding that the cyclist himself was rash and negligent and was responsible for the accident; due to the sudden demise of the sole bread winner of the family, the family members are in a deprived condition; and the Tribunal ought to have entertained the claim petition and awarded just compensation as claimed by the claimant.

5. The first respondent-Venkatachalam, tractor driver, was examined as R.W.1 before the Tribunal. He deposed that when he was proceeding the tractor from East to West direction near Hope College, the deceased was riding the bicycle holding the back side of the tractor. The persons who were sitting in the trailer told the deceased not to do that; when the deceased left the trailer, due to loss of balance, he fell down and he dashed against another cyclist who was coming with a milk can. One Sasidharan was examined as P.W.2 on the side of the claimants. He deposed before the Tribunal that at about 7.00 p.m. on the date of accident, he was standing at the Hope College Bus Stand and at that time, the deceased was proceeding in his bicycle from East to West direction and a tractor with trailer was proceeding on the back side of the bicycle and it hit the bicycle which was proceeding on the left side of the road, and due to the accident, the deceased sustained fatal injuries. But as per Ex.R1-Judgment of the Criminal Court, the deposition of the said Sasidharan before the Criminal Court, is to the effect that on the date of accident, at about 6.00 p.m., he came near Hope College Bus Stand and at that time, a tractor hit a person who was proceeding in a bicycle on the front and due to the impact, the deceased was thrown out and thereafter the deceased was taken to the hospital by an auto and thereafter, the deceased died in the hospital. It was also admitted by him that the deceased is his relative. The learned counsel appeared on behalf of the claimants submitted before the Tribunal that the deceased and another person who also came in another bicycle with a milk can, dashed against each other and in the impact, the milk can had fallen on the deceased and due to the same, the

deceased died. In the Post Mortem Certificate marked as Ex.P7, it was observed that "there is extensive retroperitoneal and retroperitoneal haematoma in the lower part of the abdomen and pelvis", which differed from the above argument advanced on the side of the claimants before the Tribunal. Since there were discrepancies in the evidences, and also taking note of the facts and circumstances of the case, the Tribunal came to the conclusion that only because of the negligence on the part of the deceased, the accident had occurred and accordingly, dismissed the claim petition holding that the claimants are not entitled to any compensation.

6. The observations made by the Tribunal are based on materials and evidence available on record. Further, no new fact is forthcoming to assail the reasonings rendered by the Tribunal. Hence, the Civil Miscellaneous Appeal is dismissed. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1 . The learned III Additional Sub Judge,
The Motor Accident Claim Tribunal,
Coimbatore,

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

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