



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.2.2021

CORAM:

THE HON'BLE Mr.JUSTICE D.KRISHNAKUMAR

Civil Miscellaneous Appeal No.1461 of 2000

1. Padmavathi Ammal
2 Rajagopal ... Petitioners/Appellants

..Vs..

1. Kanakaraj
2. J.Dharmalingam
3 M/s.United India Insurance Co. Ltd.,
Madras - 14. ... Respondents/Respondents

Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and decree dated 22.7.1993 made in M.C.O.P.No.291 of 1985 on the file of Principal Sub Judge (Motor Accidents Claims Tribunal) Vellore.

For Appellant	:	Mr.Manikka Sivasubramani for M/s.V.Raghavachari
For Respondent No.3	:	Ms.R.Sreevidhya
For Respondents 2	:	Mr.R.Ravichandran
R1	:	Notice Unserved

JUDGMENT

Brief facts of the case is as follows:

According to the appellants, on 15.3.1985 at about 4.45 p.m. when the deceased Janarthanan was walking along the Velappadi Bagayam road, at southern side of the Velappadi bridge, a bus bearing registration No.TN-J-5384 driven by its driver in a rash and negligent manner and hit against the deceased Janarthanan, thereby caused accident, resulting in the deceased sustained fatal injuries. Thereafter, he was admitted in hospital where he was declared dead. According to the appellants, the second respondent being the owner and the third respondent being the insurer of the vehicle, both are jointly and severally liable to pay compensation to the claimants.

2. On the side of the claimants, P.W.1 and 2 were examined and Ex.P1 to P5 were marked. On the side of the respondent, R.W.1 was examined and Ex.R1 & R2 were marked.



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3. Tribunal, based on the oral and documentary evidence adduced by the claimants, dismissed the claim petition. Challenging the said award, the claimants have filed the present appeal against the award passed by the tribunal against the claimants.

4. Heard the learned counsel appearing for the claimants/appellants and the learned counsel appearing for the third respondent/Insurance company and perused the materials available on record.

5. Tribunal considering the oral and documentary evidence adduced by both parties, came to the conclusion that the claimants failed to prove that the vehicle in question involved in the accident on a particular day. The tribunal disbelieving the evidence of P.W.1 and 2 rejected the claim petition. Assailing the said award passed by the tribunal, the claimants have filed the present appeal.

6. The learned counsel appearing for the claimants/appellants submitted that the brother of the deceased was working in the Police department. P.W.2 was eye witness to the accident. He informed to the brother of the deceased, Police Constable about the accident occurred on that day. A complaint was lodged before the Police, F.I.R. was registered and the case was tried before the Judicial Magistrate Court. Driver of the vehicle in question was acquitted from the criminal proceedings. The appellants have filed a claim petition before the tribunal. Tribunal without considering the evidence adduced by the appellants in proper perspective, wrongly dismissed the claim petition which is unsustainable in law.

7. When the appeal was taken up for hearing on 11.8.2009, this Court found that the F.I.R. which was registered on the basis of the complaint given by a police official who was not examined before the tribunal, Ex.P4 did not speak about any damage caused to the bus, tribunal came to the conclusion that no clinching evidence was available before the Tribunal to come to a conclusion that the alleged bus involved in the accident. After hearing both sides, on the request of the appellants, the award was remanded to the tribunal by directing the tribunal to record evidence under Order 41 Rule 25 of the Code and also directed the tribunal to submit a report regarding genuineness of the involvement of the bus in the accident at the relevant point of time. Pursuant to the order passed by this Court, both sides appeared before the tribunal and the appellants filed an amendment petition before the tribunal. P.W.3, 4 and 5 were examined on the side of the appellants and the respondent/Insurance Company cross examined the witnesses. After recording the evidence, the tribunal had elaborately



considered the issue, especially the Ex.P4 report of the Motor Vehicle Inspector stating that the particulars of the driver and other records were not furnished and and therefore, tribunal came to the conclusion that there is no clinching evidence to prove that the alleged bus involved in the accident causing death of the deceased.

8. According to the learned counsel appearing for the appellants, the deceased Janarthanan died due to the rash and negligent driving of the bus bearing registration No.TN-J-5384 thereby caused accident on 15.3.1985. The acquittal of the driver of the bus in the criminal case would not stand in the way of the claim petition and the same has to be decided on its own merit. The evidence of P.W.2 clearly speaks about the involvement of the bus in the accident and the death of the deceased. During cross examination, he clearly stated that he did not lodge complaint. He only adduced evidence before the tribunal. Therefore, the tribunal has rejected his evidence. Pursuant to the direction of this Court, P.W.3, P.W.4 and P.W.5 were examined. P.W.3 Police constable, brother of the deceased who lodged a complaint before the Police. P.W.5, Inspector of Police who registered the complaint. Tribunal found that the evidence of P.W.2 is inconsistent with the evidence of P.W.3 and also disbelieved the evidence of P.W.4. P.W.5 deposed that he arrested the driver of the bus at the time of accident and sent the bus to the Motor Vehicle Inspector for inspection. However, in Ex.P4, Motor Vehicle Inspector has stated that name and address of the driver and driving licence particulars were not furnished. Therefore, the tribunal has come to the conclusion that there is no evidence or materials to prove that the bus bearing registration No.TN-J-5384 involved in the accident thereby caused the death of the deceased and submitted a report before this Court. Copy of the report was also gone through by both sides. Further, even though driver of the bus acquitted in the criminal case, the claim petition was independently decided by the tribunal on its own merit. Therefore, the tribunal has rightly dismissed the claim petition. Such view of the matter, there is no warrant to interfere with the award passed by the tribunal.

9. In fine, the appeal stands dismissed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

vaan



To

1. The Principal Sub Judge
(Motor Accidents Claims Tribunal)
Vellore.

2. The Section Officer,
V.R.Section, High Court,
Chennai-104.

+1cc to Mr.V.Raghavachari, Advocate, S.R.No.9632

+1cc to Mr.R.Ravichandran, Advocate, S.R.No.9150

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DVS (CO)
HS (07/09/2021)