



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.11.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.677 of 2010

- 1.Jayammal
- 2.Minor Soundaram
- 3.Palaniammal

.. Appellants/Petitioners

(Minor 2nd appellant rep by his next friend,
guardian and his mother Jayammal)

Vs.

- 1.P.Kannan
- 2.National Insurance Company Ltd.,
Salem Main Road,
Mettur Dam 636 402.

.. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 27.10.2009 in M.C.O.P.No.81 of 2006 on the file of the Motor Accident Claims Tribunal, Sub Court, Mettur.

For Appellants : Mr.P.Valliappan
For Respondents : Mr.K.Padmanabhan for R2
R1 Not Ready in Notice

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellants/claimants against the award dated 27.10.2009 in M.C.O.P.No.81 of 2006 on the file of the Motor Accident Claims Tribunal, Sub Court, Mettur.

2.The appellants are the claimants in M.C.O.P.No.81 of 2006 on the file of the Motor Accident Claims Tribunal, Sub Court, Mettur. They filed the said claim petition claiming a sum of Rs.7,00,000/- as compensation for the death of one Thanikachalam, who died in the accident that took place on 05.08.2005.

3.According to the appellants, on the date of accident



i.e., on 05.08.2005 at about 8 p.m., when the deceased, after finishing his work, was walking near Post Office, Mettur Dam, the driver of the auto bearing Registration No.TN 27 E 1445 belonging to the 1st respondent, insured with the 2nd respondent, who was coming in the opposite direction, drove the same in a rash and negligent manner, dashed on the said Thanikachalam and caused the accident. The eye-witnesses Matheswaran and Kamaraj informed about the accident to Meiyappan, brother of Thanikachalam. On 07.08.2005, Meiyappan, the brother of Thanikachalam lodged a complaint before the Police Station and First Information Report was registered. Subsequently, the case was dropped for the reason best known to them. After the accident, till his demise on 07.08.2005, he was treated in the Government Hospital, Mettur Dam. The appellants have also made averments with regard to the avocation, income and age of the deceased.

4.The 1st respondent, owner of the auto filed counter statement denying involvement of the auto in the accident. He submitted that the appellants failed to prove that the deceased sustained head injury due to involvement of the auto. The 1st respondent denied all the averments in the claim petition and further submitted that the deceased was a drunkard and he was not doing any hotel business. In any event, the vehicle is insured with the 2nd respondent and the 1st respondent is not liable to pay any compensation to the appellants and prayed for dismissal of the claim petition.

5.The 2nd respondent/Insurance Company filed counter statement, denying all the averments in the claim petition and submitted that alleged accident has occurred on 05.08.2005 at about 8.00 p.m., but complaint was lodged by the brother of the deceased after 2 days of the accident i.e., on 07.08.2005 at 23.30 hours. There was 2 days delay in lodging the complaint. The Police authority, after investigation, dropped the case against the driver of the auto. The auto insured with the 2nd respondent is not involved in the accident. The appellants have not proved various averments made in the claim petition and prayed for dismissal of the claim petition.

6.Before the Tribunal, the 1st appellant examined herself as P.W.1, Matheswaran and Kamaraj, eye-witnesses were examined as P.W.2 & P.W.3 and marked 14 documents as Exs.P1 to P14. The 1st respondent, owner of the auto examined himself as R.W.1, Muniappan, the driver of the auto was examined as R.W.2 and 2nd respondent examined Senior Assistant as R.W.3, examined Investigation Officer of the Insurance Company as R.W.4 and



marked 6 documents as Exs.R1 to R6.

7.The Tribunal considering the pleadings, oral and documentary evidence, dismissed the claim petition holding that the appellants failed to prove that the accident occurred involving auto bearing Registration No.TN 27 E 1445 belonging to the 1st respondent and Thanigachalam died, due to injuries sustained in the accident and version of the appellants with regard to manner of accident is unbelievable.

8.Against the said order of dismissal dated 27.10.2009 in M.C.O.P.No.81 of 2006, the appellants have come out with the present appeal.

9.The learned counsel appearing for the appellants submitted that the appellants proved that the accident occurred due to involvement of auto and the deceased died due to injuries sustained in the accident by examining P.W.1 to P.W.3 and marked Exs.P1 to P14. The Tribunal failed to consider the oral and documentary evidence let in by the appellants and written arguments filed by them. The Tribunal erred in disbelieving the evidence of P.W.2 and P.W.3, who have witnessed the accident and their names found place in Ex.P1/FIR. The Tribunal erroneously discarded Exs.P1 to P3 & P14 and evidence of P.W.2 and P.W.3. The 1st respondent as R.W.1 has admitted factum of accident as averred by the appellants. The Tribunal ought to have seen that the proceedings arising out of Motor Accident cases has to be summarily dealt with and a strict rule of proof as envisaged by Civil Court is not necessary. The Tribunal ought to have drawn adverse inference for non examination of Police Investigating Officer, who has prepared Ex.R2/Final Report and prayed for allowing the appeal.

10.The learned counsel appearing for the 2nd respondent/Insurance Company contended that the Tribunal considered the evidence of P.W.2 and P.W.3 along with Ex.P3/Postmortem Certificate, rejected the evidence of P.W.2 and P.W.3. The injuries mentioned in the Postmortem Certificate are not due to head injuries and held that P.W.2 and P.W.3 are only hearsay witnesses and their evidence cannot be considered. The Tribunal considered entire materials and rightly dismissed the claim petition and hence, prayed for dismissal of the appeal.

11.Heard the learned counsel appearing for the appellants as well as the learned counsel appearing for the 2nd respondent/Insurance Company and perused the entire materials available on record.



12.From the materials available on record, it is seen that (i) the appellants have filed the claim petition under Section 163(A) of Motor Vehicles Act. When the claim petition is filed under Section 163(A) of Motor Vehicles Act, the claimants need not plead and prove the negligence on the part of the owner and driver of the vehicle. But they have to prove the accident and involvement of the vehicle. In the present case, it is the case of the appellants that the accident occurred on 05.08.2005 near Post Office, Mettur Dam, due to rash and negligent driving by the driver of Auto belonging to the 1st respondent and insured with the 2nd respondent.

12(ii).According to the appellants, P.W.2 and P.W.3, eye-witnesses deposed that they saw the accident and they know that the deceased as he living in the same locality. They deposed that after the accident, they informed the driver of the auto, about the deceased and address of the Tea stall of Meiyappan, brother of the deceased. The auto driver took the deceased in his auto and P.W.2 & P.W.3 had left the place. It is unbelievable that when a person known to them for a long time, who is living in the same locality, was injured in the accident, they did not take care to admit the injured person in the hospital and immediately did not inform the brother of the deceased or family of the deceased Thanikachalam about the accident. According to P.W2 and P.W.3, after the accident, they went out of station due to their business and they came back only on 07.08.2005.

12(iii).According to P.W.2, he went to Tea stall of Meiyappan on 07.08.2005 and enquired about Thanikachalam. He was informed that the said Thanikachalam is at home. According to P.W.2, he went to house of Thanikachalam, where he came to know that the family member of Thanikachalam informed him that they did not know the vehicle, which caused the accident. P.W.2 informed that the accident occurred due to involvement of auto. Only thereafter the family members admitted Thanikachalam in Government Hospital, Mettur Dam on 07.08.2005 and the said Thanikachalam died on the same day. But P.W.2 in his cross-examination admitted that he did not give any complaint to the Police and the Police did not enquire about the accident.

12(iv).In the proof affidavit, P.W.3 another eye-witness has stated the similar facts as that of proof affidavit filed by P.W.2. In the cross examination, P.W.3 deposed that on 07.08.2005 after coming from his work, he went to Tea stall of Meiyappan, brother of Thanikachalam. The Tea stall was closed and P.W.3 went to Thanikachalam's house but he was not there.



Thereafter, he went to Government Hospital, Mettur at 07.30 p.m., and saw Thanikachalam. His deposition in cross-examination is contrary to chief examination that he saw Thanikachalam in his house.

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12(v).Both the proof affidavits of P.W.2 & P.W.3 are identical, but in cross-examination, they have deposed contrary to the statements in the proof affidavits. The 1st appellant examined as P.W.1 during cross examination, by counsel for 1st respondent on 24.07.2008, deposed that she and her brother-in-law Meiyappan came to know about the accident on 05.08.2005 and she gave the complaint on 06.08.2005 itself. When she was cross-examined by counsel for 2nd respondent on 18.08.2005, she deposed that only her brother-in-law lodged complaint on 07.08.2005 and the FIR was marked as Ex.P1. A reading of FIR shows that FIR was registered based on the complaint given by Meiyappan. This clearly shows that evidence of P.W.1 with regard to complaint given by her to the Police is contrary to the evidence given by her on 24.07.2008 at the time of cross examination by counsel for the 1st respondent. A reading of FIR shows that Meiyappan, brother of the deceased has given complaint on 07.08.2005 at 8.00 p.m., stating that he came to know that his brother Thanikachalam fell down near Post Office and got injured. He admitted him in the Government Hospital, Mettur Dam, informing the Doctor that his brother fell down and got injured. He further stated that his brother was in critical condition and he brought him to the hospital for further treatment. On 07.08.2005, P.W.2 & P.W.3 informed him that his brother got injured only when auto bearing Registration No.TN 27 E 1445, dashed against the deceased. On receiving the information from P.W.2 & P.W.3, Meiyappan, brother of the deceased, again admitted the deceased Thanikachalam in the hospital on 07.08.2005 at about 11.00 a.m., and informed the Doctor that his brother got injured, when auto dashed against him. On the other hand, it is the evidence of P.W.1 that they admitted her husband on 05.08.2005 itself in Government Hospital, Mettur and her husband died on 07.08.2005 in the Government Hospital, Mettur. According to P.W.1, the deceased was in hospital being treated from 05.08.2005 to 07.08.2005. As per the contents of FIR, the deceased was taken from the Hospital for further treatment at night 12.30 p.m., on 05.08.2005 itself to the house of Thanikachalam. The appellants have not filed Accident Register or Discharge summary from the hospital to show that the deceased was admitted in the Government Hospital on 05.08.2005 itself. The injury mentioned in the Postmortem Report reveals that only abrasion found in the head of the deceased and that too was healed. There was no



fracture or grievous injuries in the head of the deceased. The Tribunal considering the above materials and Postmortem Report, held that the appellants have not proved that the deceased Thanikachalam sustained injuries only in the road traffic accident involving auto belonging to the 1st respondent which was driven by its driver in a rash and negligent manner, insured with the 2nd respondent and he died due to the said injuries.

13.The Tribunal considered evidence of P.W.1 to P.W.3 in proper perspective, held that their evidence is not believable and acceptable and rejected the evidence of P.W.1 to P.W.3. The Tribunal also considered evidence of R.W.1 and R.W.2 and accepted their evidence. The Tribunal also considered the scope of Section 163(A) of Motor Vehicles Act. As per Section 163(A) of the Motor Vehicles Act, the claimants need not plead and prove the negligence on the part of the owner or driver of the offending vehicle. But they must prove that the offending vehicle was involved in the accident. In the present case, the Tribunal considering the entire materials thoroughly, held that the appellants failed to prove that the deceased sustained injuries by involvement of the auto.

14.The contention of the learned counsel for the appellants that the Tribunal failed to consider the written arguments filed by the learned counsel for the appellants is not correct. The Tribunal has considered the contention raised by the learned counsel for the appellants in the written arguments and rejected the same by giving cogent and valid reason. The Tribunal has elaborately considered the materials placed before it and dismissed the claim petition by giving cogent and valid reason. There is no error or irregularity in the said order of the learned Judge warranting interference by this Court.

15.In the result, this Civil Miscellaneous Appeal is dismissed. No costs.

Sd/-

Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

1.The Subordinate Judge,
Motor Accident Claims Tribunal,
Mettur.



2.The Section Officer,
VR Section, High Court,
Madras.(2 Copies)

+1cc to Mr.P.Valliappan, Advocate SR.No.62788

C.M.A.No.677 of 2010

GSM(CO)
GN(08/02/2022)