

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 05.01.2021
CORAM:
THE HON'BLE Mr. JUSTICE D.KRISHNAKUMAR
Civil Miscellaneous Appeal No.1295 of 2011

1. M.Jeevitha
2. R.V.Sankari Bai
3. N.M.Dhandayutham
4. M.Mukeswaran (minor)
(minors rep by his mother and next friend
the 1st appellant) ... Appellants/Petitioner

..Vs..

- 1.S.Valarmathi,
W/o G.Sundaramoorthy,
No.48/1, Ramar Koil Street, Minnur Village and Post,
Vaniyambadi Taluk, Vellore District.
- 2.The Divisional Manager,
The New India Assurance Company Limited,
C.S.I. Buildings, No.1, Officers Line, Vellore-1.
- 3.D.Saravanan,
S/o Dhandayutham,
No.11, Gandhi Road, 4th Lane, Ambur,
Vellore District.
- 4.The Divisional Manager,
National Insurance Company Limited,
No.19, Officer's Line, Vellore-1. ... Respondents/Respondents

Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 29.10.2010 made in M.C.O.P.No.24 of 2006, on the file of the Motor Accidents Claims Tribunal, Addl. District and Sessions Court (Fast Track Court), Vellore.

For Appellants : Mr. M.Sivakumar

For Respondents 1 & 3 : No Appearance for R-1 & R-3
Mr.M.Krishnamoorthy for R-2
Mrs.R.Sreevidhya for R-4

JUDGMENT

The wife, parents, and minor son who are the dependents of the deceased Manikandan have filed the claim petition in M.C.O.P.No.24 of 2006 before the Tribunal claiming compensation of Rs.6,50,000/- for the death of Manikandan in a

road accident.

2. On 12.11.2004 at 11.00 p.m., the deceased Manikandan, husband of the first appellant/claimant met with an accident while he was riding two-wheeler Bajaj Kawasaki bearing registration No.TN 23 R 8491 in Ambur to Pernambut road next to Chinnavarikkam Village, a lorry bearing registration No.TN 23P 8438 driven by its driver in a rash and negligent manner, hit the two wheeler and caused grievous injuries to Manikandan all over his body and he was taken to Government hospital, Ambur for treatment where it was informed that Manikandan died on the way to hospital. A case in Cr.No.638 of 2004 was registered under Sec.304(A) of I.P.C. by Umabarath police station. The deceased was 27 years at the time of accident, earned Rs.10,000/- per month by running a grocery shop. The first petitioner is the wife, second and third petitioners are the parents and fourth petitioner is the minor son of the deceased Manikandan. The first and third respondents are owners and the second and fourth respondents are the insurers of both the vehicles involved in the accident.

3. The second respondent Insurance Company denied the said averments of the claimants/appellants.

4. The Tribunal has gone into the objection raised by the second respondent Insurance Company and perused the copy of the F.I.R. wherein it was noted that the police have registered a case as hit and run case and the police was not able to trace the vehicle which caused accident and filed final report before the concerned Judicial Magistrate Court by stating that the F.I.R. was closed as 'Undetected' and no vehicle was subjected to Motor Vehicle Inspection. Further, the Tribunal also found that since the policy did not cover the rider (deceased) of the two wheeler who was not the owner of the two wheeler, the respondents 3 and 4 Insurers of the vehicle are not liable to pay any compensation to the claimants and dismissed the claim petition filed by the appellants.

5. Dissatisfied with the order of the Tribunal, the claimants are before this Court in the appeal.

6. Heard the learned counsel appearing for the appellants and the learned counsel appearing for the respondents 2 and 4 and perused the materials available on record.

7. Admittedly, no other material has been placed before this Court to prove that the lorry bearing registration No.TN 23P 8438 involved in the accident and caused death of the deceased. In such circumstances, there is no warrant to interfere with the order passed by the Tribunal.

8. However, it is brought to the notice of this Court that under Sec.163 of M.V. Act, 1988, there is a scheme for appellants on hit and run case. The learned counsel appearing for the appellants seeks liberty to approach the concerned authority to seek remedy provided the period in which the aforesaid litigation was pending before the Claims Tribunal be excluded. Under the Motor Vehicle Act, there is no period of limitation. However, the petitioner is given liberty to approach the authority concerned and file an application. The authority concerned on receipt of such application, shall consider the same and fact that the said litigation was pending before the Tribunal without taking note of the delay in approaching the authority concerned in filing an application and pass appropriate orders.

9. In the result, the appeal is dismissed with the above observations. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Divisional Manager,
The New India Assurance Company Ltd.,
C.S.I. Buildings, No.1, Officers Line, Vellore-1.
2. The Divisional Manager,
National Insurance Company Ltd., No.19, Officer's Line,
Vellore-1.
3. The Additional District and Sessions Judge,
(FTC) Vellore.

+1 cc to M/s.M.Krishnamoorthy, Advocate, SR.NO.747

+1 cc to M/s.C.Prabhakaran, Advocate, SR.NO.276

Copy to
The section Officer,
VR Section,
High Court, Madras

CMA.No.1295 of 2011

CNR (CO)
NS (11/05/2021)