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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.03.2021

CORAM:

THE HON'BLE Mr.JUSTICE D.KRISHNAKUMAR

CMA Nos.323, 324, 325, 326 & 327 of 2013

C.M.A.No.323 of 2013

N.Sivaraj ... Appellant

..Vs..

1.B.Philip Kutti

2.A.Johnson.

3.The Oriental Insurance Co. Ltd.,
Branch Office,
Pulimoottil Buliding,
P.B. No. 17,Post Office Junction,
Punallur, Kerala State.

... Respondents

Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and decree dated 30.11.2007 made in M.C.O.P.No.180 of 2007 on the file of Additional District Court/ Fast Track Court No.1 (Motor Accidents Claims Tribunal), Erode.

C.M.A.No.324 of 2013

Seethamma @ Seethalakshmi ... Appellant

..Vs..

1.B.Philip Kutti

2.A.Johnson.

3.The Oriental Insurance Co. Ltd.,
Branch Office,
Pulimoottil Buliding,
P.B. No. 17,Post Office Junction,
Punallur, Kerala State.

... Respondents

Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and decree dated 30.11.2007 made in M.C.O.P.No.181 of 2007 on the file of Additional District Court/ Fast Track Court No.1 (Motor Accidents Claims Tribunal), Erode.



C.M.A.No.325 of 2013

Gobinath @ Thiruselvamm

... Appellant

..Vs..

1.B.Philip Kutti

2.A.Johnson.

3.The Oriental Insurance Co. Ltd.,
Branch Office,
Pulimoottil Buliding,
P.B. No. 17,Post Office Junction,
Punallur, Kerala State.

...Respondents

Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and decree dated 30.11.2007 made in M.C.O.P.No.182 of 2007 on the file of Additional District Court/ Fast Track Court No.1 (Motor Accidents Claims Tribunal), Erode.

C.M.A.No.326 of 2013

Sundararajan

... Appellant

..Vs..

1.B.Philip Kutti

2.A.Johnson.

3.The Oriental Insurance Co. Ltd.,
Branch Office,
Pulimoottil Buliding,
P.B. No. 17,Post Office Junction,
Punallur, Kerala State.

...Respondents

Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and decree dated 30.11.2007 made in M.C.O.P.No.183 of 2007 on the file of Additional District Court/ Fast Track Court No.1 (Motor Accidents Claims Tribunal), Erode.

C.M.A.No.327 of 2013

1.Sundararajan

2.Minor Yashoda,

D/o Sundararajan

3.Minor Brindha,

D/o Sundararajan

... Appellants

Minors rep by Father/Guardian Sundararajan



..Vs..

1.B.Philip Kutti

2.A.Johnson.

3.The Oriental Insurance Co. Ltd.,
Branch Office,
Pulimoottil Buliding,
P.B. No. 17,Post Office Junction,
Punallur, Kerala State.

... Respondents

Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and decree dated 30.11.2007 made in M.C.O.P.No.185 of 2007 on the file of Additional District Court/ Fast Track Court No.1 (Motor Accidents Claims Tribunal), Erode.

For Appellant in all CMA : Mr.Harish
for N.Manokaran

For Respondent No.3
(in all CMAs) : Mr. J.Chandran

Respondent No.1 & 2
(in all CMAs) : No Appearance

COMMON JUDGMENT

Dissatisfied with the Common judgment and decree, dated 30.11.2007, passed by the tribunal dismissing the Claim Petitions in M.C.O.P.Nos.180 to 185 of 2007, the claimants in MCOP.Nos. 180 to 183 & 185 of 2007 are before this Court to set aside the judgment and decree.

2.It is the case of the claimants/appellants herein that on 04.10.2004 at about 7.20 p.m, the appellants were traveling in the Maruthi Omni bearing no. TN-33-AA-8591 from Erode to Kanyakumari on Virudhunagar to Sathur NH7 main road. One Mr.Sundararajan-Claimant/Appellant in C.M.A.No.326 of 2013 was driving the said Maruthi on his left side of the road. When the vehicle was traveling near Ettur Vattam Vulakku, a lorry bearing no. KL-07-K-4635 was proceeding ahead of the said maruthi omni van rashly and negligently by its driver without observing the traffic rules and suddenly applied the brake. Due to which the Maruthi Omni Van dashed against the rear side of the lorry and the claimants who were travelling in the said Maruthi Van sustained grievous injuries and one Mrs.Sumathi died on the



spot. The claimants have filed separate claim petitions before the tribunal, claiming compensation for the injury sustained by the appellants and for the death of Sumathi, in a motor accident on 04.10.2004 .

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3. Before the Tribunal, witnesses P.W.1 to P.W.9 were examined and Exhibits P1 to P46 were marked on the side of the claimants whereas R.W.1 was examined and Exhibits R1 to R3 were marked on the side of the respondents.

4. After analyzing both oral and documentary evidences, the tribunal concluded that the accident was occurred only due to the negligence on the part of the driver of the Maruthi Omni Van, therefore they are not entitled to claim compensation from the Respondent and accordingly dismissed the claim petitions by way of common judgment.

5. Aggrieved over the same, the claimants/ appellants have preferred the present appeals to set aside the Judgment and decree of the Tribunal.

6. The learned counsel for the appellants submitted that the tribunal without considering the fact the fact that there is no iota of material on record to controvert the oral and documentary evidence produced by the claimant, fixed the negligence on the part of the driver of the Maruthi Van. Therefore, in the absence of the any material to show the negligence on the part of the driver of the Maruthi Van, there is no need or necessity to implead the driver, owner and insurer of the Maruthi Van as party respondents. The learned counsel for the appellants further submitted that the tribunal failed to note that the victims are 3rd parties insofar as respondents are concerned, therefore the findings of the tribunal is not borne out of records and liable to be set aside.

7. The learned counsel appearing for the Insurance Company objected the claim and justified the award passed by the tribunal is fair and therefore, does not warrant interference by this Court.

8. Heard the learned counsel appearing for the claimants/appellants, the learned counsel appearing for the respondent/Insurance Company and perused the materials available on record.

9. According to the learned counsel for the appellants, the tribunal has decided the claim petitions as summary



proceedings, whereas the claimants/appellants have produced the documents before the tribunal to prove the negligence on the part of the driver offending vehicle/1st respondent. PW1 to PW6 speaks about the negligence on the part of the 1st respondent/driver of the lorry. But the respondents have not produced any contra evidence before the tribunal to disprove the negligence on the part of the 1st respondent.

10. It is seen from the records, during cross examination PW1 to PW4 have deposed that they were able to see that lorry which was going ahead of the Maruthi Van and due to non illumination of lights on the back side of the lorry and due sudden brake applied by the driver of the lorry, the Maruthi Van dashed against the lorry and accident occurred. PW4 had deposed that he was driving the Maruthi Van at a speed of 55 kmph at the time of the accident. PW1 had deposed that there was no need for the lorry to stop suddenly by applying brake. He further deposed that the driver of the Maruthi Van, which was going at a speed of 55kmph, was looking at the lorry from a distance of about 50 feet. According to PW1 and PW4, the headlights of both the vehicles were on as it was dark at 7.20pm at the time of the accident. The front light of the Maruthi Van was said to have illuminated up to about 200 feet, and the vehilce in front could have been seen from about 200 feet away, but the Marthi Van in which the claimants have travelled could have slowed down, if it had slowed down to 50 feet to overtake the lorry at a distance of 50 feet, the accident could have been avoided. The distance between the lorry and the Maruthi Van at the time applying brake by the lorry driver was only at 10 feet. Therefore, it is clear that the driver of the Maruthi Van has suddenly increased the speed while nearing the lorry. As per the report of the motor vehicle inspector, only right rear red light of the lorry was slightly damaged, but the Maruthi Omini Van was totally damaged. The appellants/claimants have not marked the said Motor Vehicle Inspector's report. Therefore, considering the nature of damages caused to both vehicles, the tribunal rejected the contentions of the claimants that the accident had occurred due to the negligence on the part of the driver of the lorry.

11. From the aforesaid discussions, it is clear that the claimants have not produced any evidence to prove the negligence on the part of the first respondent. The specific suggestion put forth by the insurance company that non joinder of driver of the Maruthi Van. The learned counsel for the Insurance Company admitted that they have not made him as party in the petition. Even in the present appeals have been filed by the claimants only based on the evidence and documents marked before the



tribunal, but no additional materials or evidence are placed to prove the negligence on the part of the 1st respondent/driver of the lorry. Therefore, the tribunal on considering the evidence of the claimants/appellants and the insurance company has rightly come to the conclusion that there are no reliable materials to prove the negligence on the part of the 1st respondent/driver of the lorry. Unfortunately, the appellants/claimants have failed to satisfy the Court with the reliable evidence and documents to substantiate their arguments. In such circumstances, the contentions of the learned counsel for appellants cannot be accepted and the same is liable to be rejected. If at all the appellants/claimants are really entitle for compensation, it is open to the appellants/claimants to seek remedy as against the concerned parties in the manner known to law.

12. In fine these Civil Miscellaneous Appeals filed by the appellants/claimants are dismissed. The Common judgment and decree passed by the tribunal in M.C.O.P.Nos.180 to 183 & 185 of 2007, dated 30.11.2007 is confirmed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Additional District Court, Fast Track Court No.1
Motor Accidents Claims Tribunal,
Erode.

2. The Section Officer,
V.R. Section,
High Court, Madras.

+5cc to Mr.N.Manokaran, Advocate SR.No.16854, 16855, 16856,
16858, 16859

CMA.No.323 to 327 of 2013

SSN(CO)
GN(28/12/2021)