



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.09.2021

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CORAM:

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A. No. 2598 of 2014

1.T.Kesavan Naicker
2.K.Vasanthi
3.K.Ananthi

...Appellants/Petitioners

Vs

1.S.Deenadayalan (ex-parte)

2.United India Insurance Co Ltd.,
"Griha: 2nd floor,
No.6, Nungambakkam High Road,
Chennai - 600 034.
Service at
United India Insurance Co Ltd.,
Motor Third Party Claims HUB,
Silinghi Buildings,
No.134, Greams Road,
Chennai - 600 006

...Respondents/Respondents

Prayer: The Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 to set aside the fair and decretal order dated 10.01.2014 made in MACTOP No.2773 of 2011 on the file of the Motor Accidents Claims Tribunal, (III Court of Small Causes), Chennai.

For Appellants : Ms.Saleema Fathima
for Mr.M.Swamikkanu

For 1st Respondent: Ex-parte

For 2nd Respondent: Mr.D.Baskaran



JUDGMENT

This appeal has been filed by the claimants, challenging the dismissal of the claim petition under the impugned judgment and decree dated 10.01.2014 passed by the III Court of Small Causes, Chennai in MCOP No.2773 of 2011.

2. The claim petition, filed by the appellants, claiming to be the dependants of the deceased viz., K.Balamurugan, who died on 02.05.2011, was dismissed by the Tribunal on the following grounds: (a) the involvement of the insured vehicle in the motor accident has not been proved by the appellants/claimants and (b) the deceased K.Balamurugan died on account of inhalation of a foreign particle during the course of his employment and not on account of rash and negligent driving of the insured vehicle and therefore, the Tribunal does not have the jurisdiction to decide the claim and if at all, the appellants have to make a claim, they can make a claim only before the Workmen's Compensation Tribunal under Workmen's Compensation Act.

3. Before the Tribunal, Ex.P.1 to P.5 were marked on the side of the the appellants/claimants and two witnesses were examined. Mrs.Vasanthi, mother of the deceased was examined as P.W.1 and the alleged eyewitness viz., T.V.Venkatakrishnan was examined as P.W.2. On the side of the respondent Insurance Company, one G.Prabhu, Sub Inspector of Police was examined as R.W.1 and two documents were marked as Exs.R.1 and R.2.

4. The Tribunal under the impugned Award has taken into consideration the oral evidence of R.W.1, Prabhu, Sub Inspector of Police who has categorically stated that only due to inhalation of a foreign particle, K.Balamurugan had died and not on account of any motor accident involving the insured vehicle.

5. Ex.R.1 Viscera Report also reveals that " the deceased would appear to have died of Asphyasia due to aspiration of food particles".

6. The First Information Report, which has been marked as Ex.P.1 also reveals that the deceased died only on account of his own health issues and does not reveal the involvement of any motor vehicle for cause of his death.

7. The Tribunal has taken into consideration the aforementioned factors and only thereafter, has rightly rejected the claim of the appellants. This Court does not find any infirmity in the findings of the Tribunal.



8. With the aforesaid observations, the Civil Miscellaneous Appeal is dismissed. No costs.

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Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

sr/rgi

To

The Motor Accidents Claims Tribunal,
III Court of Small Causes), Chennai.

+1cc to M/s.P.T.Saleem Fathima, Advocate Sr.45333

C.M.A.No. 2598 of 2014

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