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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 08.02.2021

Pronounced on : 11.02.2021

Coram:

THE HONOURABLE DR. JUSTICE G. JAYACHANDRAN

C.M.A.No.291 of 2017

Tata AIG General Insurance Company Ltd.,
No.1, Ethiraj Salai, Chennai 600 008.

.. Appellant/2nd Respondent

/versus/

1.Tmt.Manickam

2.S.Ramesh

3.A.Prabakaran

...1st & 2nd Respondent/Claimants

..3rd Respondent/1st Respondent

Prayer: Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles act, 1988 against the decree and judgment dated 14th day of June 2016 made in M.C.O.P.No.401 of 2012 on the file of the Motor Accident Claims Tribunal(Sub Court), Tiruttani.

For Appellant : Mr.K.Vinod

For Respondents : Mr.K.Varadha Kamaraj for R1 and R2
No appearance for R3

J U D G M E N T

The Insurance Company is the appellant. Assailing the award passed by the Motor Accident Claims Tribunal, Sub Court, Tiruttani, fastening the liability on the Insurance Company, the present appeal is filed.

2.The case of the claimants is that, on 11.05.2012 at about 11.30 hours, the first respondent vehicle bearing Reg.No.TN-20-AK-7632 rash and negligently hit one Subramani, S/o Muthu and caused multi injuries. The said Subramani died on 15.05.2012. Since the accident occurred due to the negligence of the driver of the 1st respondent vehicle, the claim petition for Rs.10,00,000/- filed against the 1st respondent and the appellant, who is the insurer.



3.Counter filed stating that the accident occurred due to the negligence of the deceased Subramani. Without noticing the vehicle, Subramani recklessly crossed the road and invited the accident.

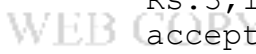
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4.Before the Tribunal, three witnesses were examined on behalf of the petitioners. Six exhibits were marked. On the side of the defence, one witness was examined and two exhibits were marked.

5.According to the appellants, on 11.05.2012, Subramani found in an unconscious state near Ayesha Hospital, the juice shop owner noticed him and called 108 Ambulance and got him admitted at the Government General hospital, Chennai. First Information Report was registered by Kilpauk Police on the same day. On 15.05.2012 the said Subramani died in the hospital. The 2nd First Information Report was registered by the Traffic Investigation Wing with false averments belatedly on 05.11.2012 as if the said Subramani was hit by the Tata Ace goods van bearing Reg.No.TN-20-AK-7632. The case was registered against the driver of the Tata Ace Van. The driver of the Tata Ace van was arrested on 27.11.2012, but no progress in the said investigation. Collusion with police, the claimants were managed to register the 2nd First Information Report with different set of facts, as if the deceased sustained injury in the road accident happened on 11.05.2012 near Korattur Milk Farm Road. Whereas, the earlier First Information Report registered on 11.05.2012 proved that the said Subramani was found in unconscious state at millers Road, Kilpauk. The Tribunal failed to discredit Ex.P6 given by K.N.Sukumar's Clinic; Since it is contrary to the Ex.P3-Postmortem certificate; and Ex.R2-First Information Report, dated 11.05.2012. While the earlier medical records reveals that no external or internal injury to the victim pointing to any road accident, the Tribunal has erroneously accepted the evidence of PW-3, who is not the eye witness to the incident.

6.The learned counsel appearing for the respondents/claimants submitted that on 11.05.2012 Subramani was hit by Tata Ace Van bearing Reg.No.TN-20-AK-7632. The driver of the van assured to take the injured to the hospital, but discarded him near Ayesha Hospital, Milliers Road. Based on the information given by one Umashankar, the claimants went and enquired at General Hospital . She came to know that Subramani died due to the accident injury.

7.The learned counsel therefore contents the 2nd First Information Report marked as Ex.P1 dated 05.11.2012 registered by the Traffic Investigation Wing of Ponnammallee based on true facts. Whereas the earlier first Firs Information Report marked



8. The Tribunal considering the evidence awarded a sum of Rs.3,10,200/- as compensation with interest. The Tribunal has accepted the deposition of PW-3-Head Constable attached to Traffic Investigation Division at Poonanamallee wherein he has stated that the injured Subramani was first noticed by the owner of the Juice Shop located at Milliers Road with the help of 108 Ambulance. The said Subramani was taken to the Government General Hospital. He died on 15.05.2012. Later, based on the complaint given to the Traffic Investigation Wing on 05.11.2012. The 2nd First Information Report was registered and the Tata Ace van driver was arrested. PW-1 is the wife of the deceased Subramani. She is admittedly not eye witness to the accident. PW-2 claims to be the witness to the accident occurred on 11.05.2012 Korattur Milk Farm Road. He is not the first informant. He admit that he came to the Court to give evidence on the request of Ramesh the 2nd claimant. He admits that he did not see the accident. When he came to this spot, he saw Subramani lying on the road and the Tata Ace Van driver near him.

9. On considering these evidence, though the Tribunal has awarded compensation fixing the liability on the driver of the Tata Ace van, the ground raised by the appellant/insurance company suspecting the very nature of the accident alleged cannot be ruled out. More so, in the light of the fact that the Insurance Company has engaged its own investigator and he has filed a report which is marked as Ex.R1. He has also mounted the witness box and examined as RW-1. According to the investigation report filed by Ex.R1. A person in unconscious state was found near Aysha Hospital by one Murugan, who is the owner of the nearby sugarcane juice shop. He had called the Ambulance and arranged for the admission of the unknown person into the General Hospital. The deceased died on 15.05.2012 in the hospital. He was identified by his relatives much later. For want of identification, the post-mortem was not conducted immediately. Only after ascertaining the identity of that person as Subramani the post-mortem was conducted on 19.05.2012,

10. The First Information Report in this case alleging road accident itself was filed after six months. The reason given by PW-3 for the belated First Information Report is not convincing. However, the Tribunal has accepted that the delay was due to ignorance of the fact that Subramani died in the road accident. This justification is not appealing to the common sense. If a member of the family go missing, the natural tendency is search for him and to lodge a complaint for man missing. It appears that the deceased Subramani, who was found in an unconscious



state, was taken to the hospital at the instance of a good Samaritan by name Murugan a juice vendor. The post mortem certificate which is marked as Ex.P3, does not disclose any external injury. It is PW-2, who claims to be the witness to the accident, referred above the first aid given to the injured person by the Doctor at Dr.K.N.Sukummar's Clinic. Ex.P5 is the photocopy of the referral letter to the Chief Medical Officer (CMO), General Hospital given by Doctor J.Nagarajan. How this referral letter came into the hands of the claimants, when the original is addressed to the Chief Medical Officer(CMO), General Hospital, is unexplained. The author of the document by name Dr.J.Nagarajan was not examined to verify the veracity of this letter. Hence, this document was marked with objection.

11.When the post-mortem indicates that there was no external injury. The letter of the Doctor J.Nagarajan of Dr.K.N.Sukummar's Clinic addressed to the Chief Medical Officer (CMO), General Hospital, Chennai mentions about the head injury. If really the deceased Subramani sustained head injury, when he was admitted in the General Hospital on 11.05.2012 and under treatment as inpatient till his death on 15.05.2012, definitely the Doctors would could have noticed the injury and treated him. The said antemortem injury could have found place in the post mortem certificate. Since there is no indication of the fact that the deceased Subramani sustained head injury in the traffic accident, it is unbelievable to accept the case of the claimants that the death of Subramani was due to the road accident. The belated First Information Report, non-presence of external injury in the post mortem certificate, belies the claimant version about the accident. To add inconsistency in the version by the police, two different First Information Reports with different facts leads to the conclusion that the claimants' case for compensation is unsustainable and the award passed by the Tribunal is liable to be set aside.

12.The learned counsel appearing for the appellant/insurance company submitted that the award amount has already been deposited into the account of M.C.O.P.No.401 of 2012, as per the direction of this Court. If it is so, the appellant/Insurance company is entitled to withdraw the entire award amount with accrued interest, if any, on filing appropriate application.

13.In the result, this Civil Miscellaneous Appeal is allowed. No order as to costs.

Sd/-
Assistant Registrar

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Sub Assistant Registrar



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To:

The Subordinate Judge,
The Motor Accident Claims Tribunal,
Tiruttani.

Copy to:

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

+1cc to Mr.K.Varadha Kamaraj, Advocate Sr No.8201
+1cc to Mr.K.Vinod, Advocate Sr No.8208

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SSI (CO)
PR (16/11/2021)