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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on	04.01.2022
Judgment delivered on	01.02.2022

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM
and
THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

C.M.A.No.998 of 2020

1.Meenakshi
2.Vignesh (Minor)
Saroja (since died) ... Appellant/Claimant

Vs.

1.S.Mahesh
(Remained ex-parte before Tribunal)
2.Bajaj Allianz General Insurance Co. Ltd.,
Old No.276, 277, New No.497, 498
Isanakattim Buildings, 5th Floor,
T.N.Pollution Control Board,
P.H.Road, Arumbakkam,
Chennai - 600 106. ... Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act 1988 against the Award and Decree dated 06.12.2018 made in MACT.O.P.No.5585 of 2012 on the file of the Motor Accident Claims Tribunal, II Small Causes Court, Chennai.

For Appellant:Mr.N.M.Muthurajan

For Respondents :R.1- Set Ex-parte
before the Tribunal
Mr.J.Michael Visuvasam (for R2)



JUDGMENT

V.SIVAGNANAM, J.

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This appeal arises out of the award passed by the Motor Accident Claims Tribunal, II Small Causes Court, Chennai in MCOP No.5585 of 2012 dated 06.12.2018.

2.Facts which are necessary for disposal of this appeal, run thus:-

On 07.08.2012 at 21.45 hours, deceased Lakshmanan, aged about 39 years, was relaxing by sitting on the sand in Anna Main Road, MGR Nagar, near Prabha wines, Chennai. At that time, a sand laden van bearing Reg.No.TN-09-AE-6555, came on the reverse direction, driven by its driver in a rash and negligent manner, ran over the deceased. In the impact, the deceased died on the spot. Alleging that the accident had occurred only due to the rash and negligent driving of the driver of the van, the wife, minor son and mother of the deceased filed the claim petition before the Tribunal claiming compensation of Rs.35,00,000/-, but the Tribunal dismissed the claim petition. Aggrieved by the same, the present appeal has been filed by the claimants.

3.The learned counsel appearing for the appellants/claimants submitted that the Tribunal, on suspicion of not filing the Forensic Report based on the police report (Ex.P.3), came to the conclusion that the accident had not been caused by driver of the first respondent's vehicle. The Tribunal failed to consider the oral evidence of P.W.2-A.Kumar, who was eye-witness to the occurrence. Further, the Tribunal failed to consider the Charge Sheet filed by the Investigating Officer (Ex.P.6), in which, the Investigating Officer finally stated that the driver of the first respondent's vehicle caused the accident. However, the Tribunal, without ascertaining any valid reasons, has not considered the oral evidence of P.W.2-Kumar and Final Report filed by the Police. These two evidence establishes that the deceased died due to the road accident. It is supported by the medical witness Dr.Rajendran (R.W.2), who conducted the postmortem. In such circumstances, the finding of the Tribunal that the accident is not proved, is unsustainable and liable to be set aside. The claimants are entitled to compensation as prayed for and thus, he pleaded to allow this appeal.

4.The learned counsel appearing for the second respondent/Insurance Company submitted that there is no evidence to show that the deceased had died due to the road accident and



there was no eye-witness. In this case, the Police sent letter (Ex.P.3) to the Forensic Department, Chennai, to find out the tyre mark on the back side of the deceased with that of Eicher Van bearing Reg.No.TN-09-AE-6555 and Mahindrda Load Van bearing Reg.TN-P-6555. But there is no evidence to show that as to whether the Forensic Department had sent a report to the Police. Apart from this, the Police filed the Charge Sheet (Ex.P.6) against the driver of the first respondent's vehicle. There is no evidence as to how the Police could fix the liability on the driver of the first respondent's vehicle. The Investigating Officer was not examined before the Tribunal. The appellants filed only a copy of the first page of the Charge Sheet before the Tribunal. Apart from this document, there is no evidence to show that the deceased died due to the road accident and the accident had occurred only by the driver of the first respondent's vehicle. In the absence of any evidence, the Insurance Company is not liable to pay any compensation to the claimants. The Tribunal has rightly dismissed the claim petition. There is no reason to interfere with the award of the Tribunal and he pleaded to dismiss the appeal.

5.We have considered the rival submissions of the learned counsels and perused the materials available on records.

6. A Perusal of the records indicates that the deceased Lakshmanan died due to the multiple injuries sustained by him, which is evidenced by the postmortem report (Ex.P.4). Now, the question is as to whether the deceased sustained injuries in the road accident and also as to whether the driver of the first respondent's vehicle had caused the accident. In this regard, we have considered the evidence and materials available on record. The alleged eye-witness (PW.2) Kumar deposed before the Tribunal that he had witnessed the accident at 11.00 p.m on the particular date, but he did not give any complaint to the Police and he did not even disclose the fact to any one. On a perusal of the First Information Report (Ex.P.1), it is seen that the complaint was given by one Murthy S/o Arjunan. In the complaint, he informed the Police that he found a body of 35 years male on the "eilghij" and he opined that he might have died due to the road accident, but however, he did not disclose anything.

7.The Inspector of Police wrote letter (Ex.P.3) to the Forensic Department seeking opinion with regard to identify of the tyre mark of two vehicles viz., Eicher Van bearing Reg.No.TN-09-AE-6555 and Mahindra Load Van bearing Reg.No.TN-10-P-6555. On a perusal of the entire records, it is clear that



there is no evidence that the Forensic Department had sent any report to the Police Officer. Any how, the Police Officer filed first page of the Charge Sheet. The charge sheet is marked as Ex.P.6. It is not reliable as it is not supported by oral evidence.

8. With regard to the evidence of P.W.2 Kumar, it is seen that he deposed before the Tribunal that he saw the accident at 11.00 p.m and he did not disclose the same to any one and he has not given any complaint to the Police. Further, there is no evidence to show that the Police examined the alleged Kumar to conclude that the deceased died due to the accident. Further, as per the Police requisition (Ex.P.3), the Forensic Department had not sent any report with regard to the alleged tyre mark on the body of the deceased. Further, there is no evidence to show that the Doctor, who conducted postmortem, had found the tyre mark on the body of the deceased while conducting postmortem.

9. Moreover, on a perusal of the First Information Report (Ex.P.1), it is seen that the complainant/Murthy, on seeing the dead-body on the road side, had actually intended to give complaint or not, but suddenly, the Transport Police appeared before him and received a complaint on the spot, which is totally unbelievable. Further, the alleged Charge Sheet (Ex.P.6) is an one page paper. Whether it was filed before the Judicial Magistrate's Court, whether it was taken on file and whether the case was numbered or not, are all not available on record.

10. Further, there is no evidence to show as to how the Inspector of Police came to the conclusion that the deceased died due to the road accident and the accident was caused only by the driver of the first respondent's vehicle. Therefore, the available evidence does not establish the fact that the deceased died only due to the road accident and the road accident was caused only by the driver of the first respondent's vehicle.

11. In such circumstances, the Tribunal rightly held that the accident and the involvement of the driver of the first respondent's vehicle in the accident had not been clearly proved. In our considered opinion that there is no reason to interfere with the findings of the Tribunal.



12. For the foregoing reasons, the Civil Miscellaneous Appeal fails and the same is dismissed. No costs.

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SD/-
ASSISTANT REGISTRAR

// TRUE COPY //

SUB ASSISTANT REGISTRAR

skn
To

The II Judge, Small Causes Court,
Motor Accident Claims Tribunal,
Chennai.

Copy to

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

+2cc to Mr.N.M.Muthurajan, Advocate Sr.6647
+1cc to Mr.J.Michael Visuvasam, Advocate Sr.6795

C.M.A.No.998 of 2020

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srg 24/02/2022