



C.M.A.No.1123 of 2018

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.07.2022

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.M.A.No.1123 of 2018

1.Rathinam

2.Vijayalakshmi

3.Kalidasan

4.Samundeeswari

5.Balasundaram

...Appellants

Vs

1.M/s.Achuthan Authomobiles,
75, Palanisamy Road,
Tirupattur, Vellore District.

2.Regional Manager,
New India Insurance Co., Ltd.,
Vasan Buildings,
No.106, Big Road,
Tiruvannamalai.

... Respondents



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Prayer: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgement and Decree in M.C.O.P.No.23 of 2010 dated 19.11.2010 on the file of the MACT/Addl. District Court (FTC), Tirupattur, Vellore District.

For Appellant : Mr.P.A.Sudesh Kumar
For Respondent 1 : Ex parte
For Respondent 2 : Mr.C.Ramesh Babu

JUDGEMENT

The claimants are the appellants before this Court challenging the dismissal of the Claim Petition. The Claim Petition was dismissed on the ground that the accident had occurred only on account of the negligence of the deceased himself, which has been corroborated by his father who had been examined as P.W.1 and who was also travelling in the vehicle on the said date.



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2. The appellants herein had filed M.C.O.P.No.23 of 2010 on the file of the Motor Accident Claims Tribunal, Additional District Court (FTC), Tirupattur, claiming a compensation for the death of one Manikandan, the son of appellants 1 and 2 and the brother of appellants 3 to 5. It is their case that the deceased Manikandan was a lorry driver, aged about 31 years and had died in a road accident on 26/27.01.2006. On the said date, the deceased Manikandan was driving a lorry bearing registration no.TN 23 W 6575 belonging to the 1st respondent and insured with the 2nd respondent, slowly and cautiously.

3. While so, at about 1.00 AM on 27.01.2006, while he was proceeding on Thiruperumpudur to Poondhamalli National Highway, as he reached Sembarabakkam Bridge, an unknown lorry proceeding before the vehicle of the deceased, all of sudden stopped without giving signal in the middle of the road. The deceased had not anticipated the same and to avoid the hit on the rear of the lorry he had swerved to his right and a lorry bearing registration no.TCW 7297 coming in the opposite direction hit his



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Lorry and due to the impact, the deceased had sustained fatal injuries and had died in the spot itself. Therefore, the appellants had claimed a compensation of Rs.20,00,000/-.

4. The Insurance Company had resisted the above petition stating that the accident had occurred only on account of the rash and negligent driving of the deceased Manikandan, who rashly and negligently attempted to overtake another lorry. The Insurance Company had contended that the appellants were not entitled to claim a compensation as the accident had occurred only on account of his own fault and negligence. They had also questioned the age and income of the deceased.

5. The Tribunal below on considering the evidence on record, particularly, the oral evidence of P.W.1, the father of the deceased came to the conclusion that the deceased was himself tortfeasor and was therefore not entitled to compensation. Challenging the same, the appellants are before this Court.



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6. Heard the learned counsels and perused the records.

7. Even according to the appellants, the accident had occurred when the deceased had suddenly swerved to his right, as a result of which the oncoming lorry bearing Registration No. TCW 7297 had dashed against the lorry driven by the deceased. Had the deceased maintained the requisite distance between the two vehicles, even if the vehicle in the front had braked suddenly, it would not have resulted in the accident.

8. The very narration of the incident shows that the deceased was driving the lorry in a rash and negligent manner and since he was driving at an uncontrollable speed when the vehicle in front had stopped the deceased was unable to control his vehicle, as a result of which the accident had occurred.



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9. The 1st appellant who was examined as P.W.1 and who travelled with the deceased on the ill fated day has clearly deposed that it was the rash and negligent driving of the deceased that has caused the accident and consequently his death.

10. In the light of the above categoric statement, the order of the Tribunal cannot be found fault with, as the tortfeasor cannot be rewarded for his own negligence. The Tribunal has rightly dismissed the claim petition. Accordingly, the Civil Miscellaneous Appeal is dismissed. No costs.

06.07.2022

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Index : Yes/No
Speaking order/non-speaking order

To,

Motor Accident Claims Tribunal,
Additional District Court (FTC),
Tirupattur.

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P.T.ASHA, J.,

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