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C.M.A.No.2048 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.11.2022

CORAM:

THE HONOURABLE **MS.JUSTICE V.M.VELUMANI**
and
THE HONOURABLE **MR.JUSTICE SUNDER MOHAN**

C.M.A.No.2048 of 2021
and
C.M.P.No.1016 of 2021

1.M.Seetha
2.M.Kavitha

... Appellants

Vs.

1.M.Ravichandran

2.ICICI Lombard General Insurance Co. Ltd.,
No.189, Shop No.4, Aarthi Chambers, Anna Salai,
Chennai-2

.. Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of M.V.Act, 1988 against the award and decree dated 18.02.2020 made in M.C.O.P.No.3130 of 2015 on the file of the Motor Accidents Claims Tribunal, (Chief Judge, Court of Small Causes) Chennai.



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For Appellants : Mr.K.Varadhakamaraj

For R2 : Mr.B.Sivakollapan

J U D G M E N T

(Judgment of the Court was delivered by SUNDER MOHAN,J.)

The appeal has been filed challenging the order passed by the Motor Accidents Claims Tribunal, (Chief Judge, Court of Small Causes) Chennai in M.C.O.P.No.3130 of 2015 dated 18.02.2020 dismissing the claim of the appellants.

2. The appellants are the mother and sister of the deceased Balaji. It is the case of the appellants that, on 16.03.2015 at about 7.a.m, the deceased Balaji was travelling as a pillion rider in TVS Star City two wheeler, bearing Registration No.TN22 BR 7698 from North to South direction in Desur to Gingee Road via Lakshmipuram Ravi Land. The rider of the two wheeler drove the vehicle in a rash and negligent manner and hit against a mile stone, as a result of which, the deceased was thrown out from the vehicle and



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succumbed to the injuries on 20.03.2015. The appellants therefore filed claim petition claiming compensation of Rs.45,00,000/-, against the owner of the two wheeler and the appellant Insurer.

3. The first respondent/ owner of the two wheeler remained ex-parte before the Tribunal.

4. The second respondent herein filed a counter stating that the rider of the vehicle was the deceased Balaji. Though in the FIR, one Nagaraj was shown as the rider of the motor-cycle, the police, after investigation filed a final report stating that the rider of the vehicle was the deceased Balaji and referred the case as "charge abated". Neither the deceased nor the said Nagaraj had valid driving licence. In any event, the claim made by the appellants was highly excessive and prayed for dismissal of the claim petition.

5. Before the Tribunal, the 1st appellant examined herself as P.W.1 and examined one Pandiyan eye witness as P.W.2 and Nagaraj the rider of the two wheeler as P.W.3 and marked 13 documents as Exs.P1 to P.13. On the side of



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the respondents, Manager (Legal) of the Second Respondent Company was examined as R.W.1 and two documents were marked as Exs.R1 and R.2.

6.The learned counsel for the appellants would submit that the Tribunal had erroneously concluded that the deceased was the rider of the two wheeler on the basis of the Accident Register, Ex.P.1. The Tribunal ought not to have arrived at that conclusion merely because of the entry made in the accident register. The learned counsel also submitted that the report of the police cannot be taken as conclusive evidence of the fact that that deceased was the rider of the two wheeler and in any event, it is not binding on the Tribunal. The learned counsel therefore submitted that the evidence of P.W.2, eye witness and the rider of the two wheeler, P.W.3 respectively cogently established the fact that the deceased was riding pillion and one Nagaraj was the rider of the two wheeler. Hence, the learned counsel prayed that the appellants are entitled to compensation. The learned counsel relied upon the Judgment of a Single Judge of this Court in ***Bajaj Allianz General Insurance Co. Ltd., v. G.P.Chandrasekar and other*** reported in ***2012 (1) TN MAC 548*** and prayed for allowing the appeal and awarding compensation to the



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appellants.

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7.The learned counsel for the second respondent/Insurance Company would submit that the information contained in the accident register, Ex.P.1 was earliest in point of time. This information was furnished by one Guna who is the brother of the deceased. The said Guna was not examined by the appellants. That apart, the FIR was registered at 7 p.m after a delay of 12 hours from the time of accident. The police after thorough and fair investigation concluded that the FIR was false and the deceased was the rider of the two wheeler who met with the accident. The appellants have not challenged the final report. The final report was accepted by the learned Magistrate. The evidence of P.W.3 cannot be believed since he had not lodged the complaint immediately. FIR lodged by him is an after thought and his version therefore cannot be accepted. The evidence of P.W.2 is also artificial and his evidence also does not inspire confidence of this Court. Had he been the eye witness, he would have given a complaint to the police immediately after the accident. The Tribunal considering the materials on record rightly



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dismissed the claim petition and prayed for dismissal of the appeal.

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8. We have considered the submissions of the learned counsel on either side and perused the pleadings and available materials on record.

9. It is the case of the appellants that the deceased was riding pillion and one Nagaraj was the rider of the motor-cycle. The appellants examined P.W.2 and P.W.3 to establish the said fact. Both P.W.2 and P.W.3 did not choose to give any complaint immediately after the accident. P.W.3 was not injured in the occurrence. However fatal injuries were caused to the deceased.

10. The earliest version is found in the accident register, Ex.P.1. The information given in the said accident register is by one Guna, the brother of the deceased. It says that the deceased had a self fall from a two wheeler. The appellants have not examined the said Guna to explain the circumstances under which the information which is contrary to the present version was recorded in the accident register. The police also have filed a report showing that the deceased was the rider of the two wheeler and closed the case as "charge abated". The appellants have not challenged the said finding. The



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learned counsel for the appellants had relied upon the judgement of this

Court in the case of ***Bajaj Allianz General Insurance Co. Ltd., v.***

G.P.Chandrasekar reported in ***2012 (1) TN MAC 548*** , wherein this Court

had held that the Tribunal ought not to have given importance to the accident

register which was contrary to the final report filed by the police. In that case,

the rider of the two wheeler was charge sheeted and was found guilty.

However in the instant case, we find that the report of the police is in

conformity with the earliest version found in the accident register. Hence, that

case is not applicable to the facts of the present case.

11.That apart, P.W.3 has lodged FIR at 7 p.m, i.e., 12 hours after the occurrence, which in our view is an after thought. The genesis is sought to be suppressed by the appellants, and once the genesis is found to be untrue, the other witnesses cannot come to the aid of the claimants. P.W.2's presence is highly artificial and his evidence cannot be accepted for the reason that if had he been present in the scene of occurrence, he would have given the complaint immediately. Further, we find that the deceased was admitted in the hospital at about 10.45 a.m and the hospital authorities ought to have informed the



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police about the admission of the deceased. The earliest version given to the police from the hospital has not been brought on record.

12. Therefore, we are of the view that the appellants have not established that the deceased was riding pillion in the two wheeler. On the other hand, there is overwhelming evidence to show that it was the deceased who was the rider of the two wheeler and the accident was due to his negligent and rash driving. The appellants are not therefore entitled to any compensation as prayed for and the Tribunal has correctly concluded that the appellants are not entitled for compensation and we see no reason to interfere the order of the Tribunal.

13.Hence, the Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

(V.M.V., J) (S.M., J)

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Index : Yes / No

vsn

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To

- 1.The Chief Judge,
Motor Accidents Claims Tribunal,
Small Causes Court, Chennai
- 2.The Section Officer
V.R Section
Madras High Court.



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