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C.M.A.No.1598 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 31.10.2022

CORAM:

THE HONOURABLE MS.JUSTICE P.T.ASHA

C.M.A.No.1598 of 2018

1.L.Shanthi
W/o Lingeswaran

2.K.Dhanamari
W/o Kali

... Petitioners/Appellants

Vs.

The Union of India,
Ministry of Defence
The Wing Commander, Squadron Commander
Driving Training Squadron, MITI, AF
Air Force, Avadi, Chennai – 55.

... Respondent/Respondent

PRAYER: Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the Judgment and decree dated 21.02.2018 made in M.A.C.T.O.P.No.756 of 2013 on the file of the Motor Accident Claims Tribunal, II Additional District Judge, Poonamallee.

For Appellants : Ms.A.Subadra

For Respondent : Mr.K.Subbu Ranga Bharathi
Central Govt. Standing Counsel



C.M.A.No.1598 of 2018

J U D G M E N T

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This Civil Miscellaneous Appeal has been filed, to set aside the Judgment and decree dated 21.02.2018 made in M.A.C.T.O.P.No.756 of 2013 on the file of the Motor Accident Claims Tribunal, II Additional District Judge, Poonamallee.

2.The claimants before the Motor Accident Claims Tribunal, II Additional District Judge, Poonamallee, in M.A.C.T.O.P.No.756 of 2013, who are the wife and mother of one - K.Lingeswaran are the appellants before this Court. The appellants had filed the above Original Petition, seeking compensation of Rs.10 lakhs, for the death of Lingeswaran, in a road accident, that had occurred on 17.06.2013. It is their case that Lingeswaran was aged about 47 years and engaged in real estate business, earning a monthly income of Rs.20,000/-.

3.On 17.06.2013 at about 1930 hours, Lingeswaran was standing with his friend on the left side of the road on Avadi Veerapuram Road, near Govt. Tasmac shop, at which point of time, the respondent's vehicle bearing Registration No.07D171032Y (Eicher Canter Van) driven by its driver in a rash and negligent manner, endangering public safety, hit the deceased. As a



C.M.A.No.1598 of 2018

result of which, he sustained grievous injuries, which had resulted in his death.

The respondent had filed a very detailed counter, in which they had denied the involvement of their vehicle in the accident.

4.It is the respondent's case, that on 17.06.2013, at about 14 hours, 10 vehicles were sent to MTTI AF to Cholavaram, for taking Practical Driving Instruction (PDI) training for 20 trainees. The Practical Driving Instruction for the trainees is conducted at Cholavaram Air Field. At about 1915 hours, the vehicles had completed the training and proceeded back to their unit. The vehicles have moved one behind the other as a convoy and they had reached the destination by 2020 hours. The last vehicle had reached at 2020 hours. On the same day, around 2030 hours, the State Police had informed them, that one of the vehicle had hit a person in Vellianoor Village near Vel Tech College and the person died on the spot. At around 03.00 hours, on the next day, the police had impounded the service vehicle Eicher BA No. 171032 and arrested the Leading Air Crafts Man (LAC) Ajit Ravindra Lendwe, on the grounds of suspicion. The said vehicle was taken for Motor Vehicle Inspection and the said Ajit Ravindra Lendwe was released by the police and the vehicle was handed over back to the concerned Air Force official, on completion of the inspection. The Court of Enquiry was ordered to verify as to whether any of the



C.M.A.No.1598 of 2018

vehicles belonging to the respondent was involved in the accident and that had taken place on 17.06.2013, near Vel Tech College. On completion of enquiry, the respondent found that none of the vehicles were involved in the accident. Infact, the Court of Enquiry examined 2 independent eye witnesses, one – P.Selva Kumar and Magesh and the statements of the witnesses are totally contradictory to one and other. The respondent, therefore sought for a dismissal of the claim petition.

5.The Tribunal by its order dated 21.02.2018 was pleased to dismiss the claim petition and aggrieved by the same, the claimants are before this Court.

6.Ms.Subathra, arguing on behalf of the claimants would submit that the independent witness, P.W.2 had been examined to prove the occurrence and the fact that the respondent's vehicle was involved in the said accident. She would submit that P.W.2 has clearly deposed to the effect that he had seen the respondent's vehicle hit the deceased and Anbu and speeding away from the place of occurrence. She would further submit that a perusal of the records of the Court of Enquiry, which has been filed as Ex.R.1 would clearly show that each of the vehicle had noticed the deceased lying on the road, but none of them had stopped to give a complaint. The 8th vehicle which caused the



C.M.A.No.1598 of 2018

accident had also not given complaint, which is violative of Section 134 of the Motor Vehicles Act, which enjoins the driver of the vehicle, which caused the accident, to secure medical attention for the injured person and give information about the said accident to the Police Officer. He would further submit that the respondent has not let in any evidence to disprove the contention of the claimants that the respondent's vehicle was not involved in the accident. She would further submit that the eye witness, who has been examined as P.W.2 has deposed the fact that the accident had been caused only by the respondents vehicle.

7.Per contra, Mr.K.Subbu Ranga Bharathi, appearing on behalf of the respondent would submit that the appellants have not examined the Anbu, who was the person, who along with the deceased had gone to the Tasmac shop and was with him, at the relevant point of time, when it is claimed that they were hit by the vehicle belonging to the respondent. He would submit that none of the eye witness who had been examined by the Court of Enquiry has deposed that they were eye witness to the said accident. In their cross examination they have admitted that they have not seen the accident, but they have seen the deceased lying on the road. The learned counsel would further submit that the evidence of Anbu, not only runs contrary to his statements made each time, but



C.M.A.No.1598 of 2018

would also throw lights on the fact that the vehicle, which is alleged to have caused the accident was positioned 8th in the convoy. According to Anbu, the vehicle had hit him first and as a result of which, he had fallen in the road and the deceased had fallen right side of the road. He would further submit that mere reading of the evidence of Anbu would clearly show that the vehicle was not involved in the accident. That apart, the examination of the alleged driver, who had caused the accident would also prove the fact that the vehicle belonging to the respondent is no way responsible for the accident. Before the Court of Enquiry, 2 other persons were examined as eye witness and both of them deposed the fact that they have not seen the accident, but have seen the deceased lying on the road. He would further submit that Anbu, who is the eye witness has not been examined on the side of the claimants. That apart, Anbu, who claims to have sustained injuries has not filed a petition before the Tribunal, for claiming compensation. Therefore, the findings of the Tribunal that the respondent's vehicle has not caused the accident has to be necessarily be upheld.

8.Heard both sides and perused the materials.



C.M.A.No.1598 of 2018

9.The case of the claimants is that the vehicle bearing No.07D171032Y was the vehicle, which had caused the accident. Today, on the direction of this Court, the respondents have filed an affidavit, showing the position, in which the vehicles in the convoy had proceeded and when the accident was noticed. A perusal of the above stated affidavit would show that when the 1st four vehicles had passed the scene of occurrence, they had not seen the injured or the deceased lying on the road. It is the 5th vehicle, which had first seen the accident and the vehicle which is alleged to have caused the accident is the 8th vehicle in the convoy.

10.The case of the claimant is that the deceased along with his friend-Anbu was standing on the left side of the Avadi Veerapuram Road, near Govt. Tasmac shop. Anbu has been examined by the Court of Enquiry on 24.06.2013, seven days after the accident. In his statement, he would submit that both he and the deceased – Lingeswaran had gone to Tasmac shop to buy drinks. Lingeswaran stayed back and Anbu had gone to buy it and after buying the same, he had get on to his vehicle and at which point of time, the vehicle belonging to the respondent came from the rear and hit against them. The said Anbu fell on the left side away from the road and became un-concious,



C.M.A.No.1598 of 2018

whereas, the deceased had fallen on the road side. He would submit that they had been standing in the shop and talking. To a specific question as to what had happened, the witness would reply as follows:-

“We stopped near the TASMACH shop to buy drinks. I went to buy drink, came back & was about to get onto the two-wheeler. This time I was hit on the right side so Lankeshwaran lost balance & we both fell on the ground & bike fell over Mr.Lankeshwaran.”

11. To a further question, as to whether the two wheeler was hit by the Air Force vehicle, the witness has denied the statement and continued that the vehicle was not hit, but the Air Force vehicle hit him alone, as a result of which both of them fallen. In a categorical terms, the witness has stated that the deceased was not hit by the respondent vehicle. Further, 3 other persons were examined as eye witnesses, viz., 1.Selva Kumar, 2.Magesh and Kumaresan, in which, Selva Kumar, who originally states that he had seen the accident, later would respond to a query raised by the Air Force that when he saw the man lying on the ground an Air Force vehicle with an L – board was moving ahead on the road. He had not seen the vehicle hitting the deceased, but the Air Force vehicle was just ahead of the deceased and therefore, he was sure that it was the Air Force vehicle, which has hit the deceased and proceeded without



C.M.A.No.1598 of 2018

stopping. To a specific question as to whether he could submit that the man was hit by Air Force vehicle, he would reply that he had not seen the Air Force vehicle hitting the two wheeler or the person, but he had seen the bike lying down and the Air Force vehicle was ahead. Likewise, the 2nd eye witness – Magesh would in response to a query as to whether he has seen the accident; reply that he had enquired with Anbu, who told him that the vehicle of the respondent had hit them and went away. Thereafter, to a pointed question, he had replied that he had not seen the accident and when he arrived at the site, one man was lying on the road, upside down and the injured person was taken by him to the nearest hospital. Kumaresan, is the 3rd eye witness, who has deposed that he had dropped Anbu at his house, whereas, Magesh would also claim the same. He would also admit that he has not directly seen the accident. Further, to a pointed question, before the Court of Enquiry, the witness has deposed as follows:-

“People were afraid to stop the military vehicle. Also it took some time for the people known to the deceased to arrive at the accident site. By that time, the Air Force vehicle had gone.”

12.The evidence has been taken within a period of two to three days of the accident and therefore, the scene of accident is fresh in the minds of all the



C.M.A.No.1598 of 2018

witnesses. Therefore, none of the witnesses have stated that they have seen the accident, including P.W.2, who has been examined on the side of the claimants, before the Tribunal. Further, the person who has lodged the FIR before the police (Magesh) has not been examined before the Tribunal, however, he has been examined only before the Court of Enquiry and his statement in the FIR and his statement before the Court of Enquiry are totally contradictory with other. Therefore, the claimants have not established the fact that the accident had been caused by the respondent vehicle. Further, this Court is constrained to draw adverse inference to the fact that the claimants had kept away Anbu, from entering into the witness box, since, he was the person, who was right next to the deceased at the time of accident. In the above circumstances, since the claimants have not been able to establish the rash and negligent driving on the part of the respondent, who has caused the accident, the Tribunal has rightly rejected the claim. The proceedings of the Court of Enquiry has been marked as Ex.R.1. Another factor that compels this Court to uphold the award of the Tribunal is, on account of the fact that it is everyone's case that the Air Force vehicles were moving one after the other as a convoy and there is no scope for overspeeding and civilian witnesses have themselves deposed that the vehicles were proceeding at the speed of 25 kms to 35 kms. Further, the vehicle which alleged to have caused the accident is the 8th vehicle



C.M.A.No.1598 of 2018

in the convoy, whereas, it is from the 5th vehicle that the Air Force personnel have noticed the man lying on the ground. The Tribunal has taken into consideration these factors to arrive at its conclusion that the claim has to be rejected. I see no reason to interfere with the well considered order of the Tribunal. Accordingly, this Civil Miscellaneous Appeal stands dismissed. No costs.

31.10.2022

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Index : Yes/No

Internet : Yes/No

Speaking Order / Non-Speaking Order

To:

- 1) The Motor Accident Claims Tribunal, II Additional District Judge, Poonamallee.
- 2) The Section Officer, V.R.Section, Madras High Court, Chennai.



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C.M.A.No.1598 of 2018

P.T.ASHA, J.,

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C.M.A.No.1598 of 2018

31.10.2022