



CMA.No.1667 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.06.2022

CORAM:

THE HONOURABLE MS. JUSTICE P.T.ASHA

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1. Manimegalai
W/o. Jeganathan

2. Karthi
S/o. Jeganathan

3. Neelambal
W/o. Muthusamy Pillai

.. Appellants

VS.

1. Nallusamy

2. The National Insurance Co. Ltd.
No.L74A, Paramathi Road, Namakkal

..Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Order and decree dated 09.09.2015 in M.C.O.P. No.77/2010 passed by the Motor Accident Claims Tribunal (Principal District Judge), Namakkal.

For Appellants : Mr.R. Nalliyappan

For R1 : Notice served, no appearance.

For R2 : Mr. S. Vadivel.



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JUDGMENT

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The appellants are the claimants before the Motor Accident Claims Tribunal (Principal District Judge), Namakkal, in M.C.O.P. No.77/2010. This Civil Miscellaneous Appeal has been filed challenging the dismissal of their Claim Petition by the Tribunal.

2. The facts in brief are as follows:-

2.1. The appellants are the legal representatives of one Jeganathan, being his wife, Son and mother respectively. They had claimed a compensation of Rs.7,00,000/- for the death of P.Jeganathan in an accident involving a JCB belonging to the 1st respondent and insured with the 2nd respondent.

2.2. It is their case that on 19.09.2009, at about 8.00 a.m, the deceased Jeganathan and others were engaged in removing a peepul tree which had grown inside the well, for which the services of a JCB earth mover, belonging to the 1st respondent, had also been taken. The deceased along with one Kandasamy had tied a rope around the tree and were pulling the same, at which point, the driver of the JCB suddenly pulled the rope tied to the tree with such a force that the deceased



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Jeganathan and Kandasamy were dragged to some distance and had fallen into the well. The 1st respondent, owner of the JCB, remained absent and was set *ex-parte* and the claim was contested by the 2nd respondent/Insurance Company. The 2nd respondent had denied the fact that the JCB had caused the accident and therefore, contended that it is not a case of road accident. The Insurance Company had denied the age and the income of the deceased.

2.3. The Tribunal, after considering the evidence on record, came to the conclusion that the JCB vehicle had not caused the accident, since even the eye witness did not state that the accident had occurred on account of the use of the JCB. Challenging the same, the appellants are before this Court.

3. Mr. R. Nalliyappan, learned counsel appearing for the appellants would contend that it is an admitted case that the deceased was involved in pulling out the peepul tree from the well and for this purpose, the help of the JCB had also been sought for. It was only on account of the driver of the JCB suddenly pulling the rope, which had taken the deceased and his friend unawares that the accident had occurred.



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Therefore, it is his case that the accident was the result of the use of the JCB vehicle. He would further submit that the tribunal has not appreciated this fact and has simply dismissed the claim petition stating that the 1st respondent's vehicle has not directly caused the accident.

4. Per contra, Mr. S. Vadivel, learned counsel appearing for the Insurance Company, would submit that the very reading of the FIR would demonstrate that the JCB has not caused the accident. P.W.2's evidence also does not help the appellants.

5. Heard the learned counsel on both sides.

6. It is not the case of the appellants that the deceased was traveling in the JCB earth mover, on the contrary, it is their case that the deceased and his friend were entrusted with the task of removing the tree which has grown inside the well, for which purpose they had tied the rope from the tree to the JCB. The driver of the JCB had suddenly started the vehicle and moved forward, which caused the accident. However, the reading of the FIR and the evidence of P.W.2 does not state that the use of the JCB had caused the accident. The appellant has not been able to



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establish the fact that the usage of the JCB was the cause for the accident.

Further if the version of the Appellants were to be taken the JCB would have to move away from the well to pull out the tree and therefore, even if the rope were to be pulled the deceased would have been pulled away from the well. Further once the deceased and his friend had tied the rope from the tree to the JCB, there was no necessity for them to hold on to the rope. Therefore, the Tribunal was correct in holding that the appellants have failed to prove that the accident was the result of using the JCB vehicle. Therefore, I see no reason to interfere with the award of the Tribunal and consequently, this Civil Miscellaneous Appeal stands dismissed. No costs.

23.06.2022

bga

Index : Yes/No

Speaking / Non-speaking order

To

Motor Accident Claims Tribunal (Principal District Judge),
Namakkal.



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P.T. ASHA, J.

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