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IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 20.04.2022

JUDGMENT PRONOUNCED ON : 29.04.2022

CORAM

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

C.M.A. No.2167 of 2021

P.Adhi
K.Perumal (Died) ...Appellant/Petitioner

Vs.

1. D.Balaji
2. The Manager,
IFFCO-TOKIO General Insurance Co. Ltd.,
No.28, O.No.195,
2nd Floor, North Usman Road,
T.Nagar, Chennai 600 017. ... Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, against the Judgment and decree dated 09.03.2020 made in MCOP.No.4632/2014 on the file of the Motor Accident Claims Tribunal/VI Court of Small Causes, Chennai.

For appellant : Mr.A.A.Venkatesan

For respondents
for R1 : Notice not ready
for R2 : Mr.M.Jayaraj

J U D G M E N T

[Judgment of the Court was delivered by V.SIVAGNANAM, J]

This appeal has been filed by the claimant, challenging the judgment and award passed by the Motor Accidents Claims Tribunal/ VI Court of Small Causes, Chennai in MCOP.No.4632/2014, seeking enhancement of compensation.



2. The appellant is the claimant in MCOP.No. 4632 of 2014 on the file of the Motor Accidents Claims Tribunal/ VI Court of Small Causes, Chennai. The appellant and his husband K.Perumal (pending proceedings died) filed a claim petition for the death of their son in a road accident that occurred on 17.09.2013.

3. Before the Tribunal, the respondents contested the case by filing a counter statement. On the claimant' side, 2 witnesses PW1 Adhi and PW2 Rajini were examined and 7 documents were filed as P1 to P7. On the side of the Insurance Company, one Parthiban was examined as RW1, but no document was filed.

4. On considering the oral and documentary evidence, the Tribunal found that the accident was caused by an unknown vehicle, which is evinced by the First Information Report Ex.P1 and the Tribunal further held that the first respondent herein was not responsible for the accident and also found that the second petitioner/K.Perumal (died pending petition enquiry in MCOP) obtained compensation from the Solatium Fund under Section 161 of the Motor Vehicles Act by making application to the concerned Tahsildar. Hence, the Tribunal dismissed the claim petition, as the claimant is not entitled to file claim petition before the Tribunal. Aggrieved by this order, the first claimant in the claim petition Adhi, has filed this appeal.

5. The learned counsel appearing for the appellant submitted that the accident was caused by the first respondent, who was the driver of the offending vehicle. The deceased was the pillion rider of the said vehicle at the time of the accident. The first respondent drove the vehicle rashly and hit the Lorry and therefore, he has also contributed to the accident. Even though, the FIR was registered against the driver of an unknown Lorry, the first respondent was also negligent in driving his vehicle. Therefore, the Tribunal ought to have fixed contributory negligence on the part of the first respondent and the second respondent, which is the insurer of the first respondent's vehicle, might be directed to pay compensation on behalf of the first respondent. The Tribunal failed to appreciate the evidence of PW2 Ranjani with regard to the involvement of the first respondent in the accident. Hence, he pleaded to set aside the order of the Tribunal and award compensation to the claimant.

6. The learned counsel for the Insurance Company/second respondent herein supported the order of the Tribunal and contended that in the FIR Ex.P1, it is clearly mentioned about



the fact that an unknown vehicle caused the accident and that the first respondent herein, viz., Balaji also died in the accident. There is no evidence to prove the negligence on the part of the rider of the first respondent's vehicle. Moreover, the father of the deceased filed an application under Section 161 of the Motor Vehicles Act before the Tahsildar concerned and obtained amount from the Solatium Fund. Therefore, the Tribunal rightly came to the conclusion that the claim petition was not maintainable before the Motor Accidents Claims Tribunal. There is no merit in this appeal and he pleaded to dismiss the same.

7. Heard both sides and perused the materials available on record.

8. On a perusal of the records, it disclose the fact that the deceased Kannapan was the pillion rider of the two wheeler at the time of the accident. At that time, as per FIR Ex.P1, the first respondent herein/Balaji drove the two wheeler TN-21-AU-2169 from Sunguvachathiram to Mappedu. While they were nearing Pudupattu Koot Road, an un-identified vehicle hit the motorcycle. In consequence thereof, the rider/Balaji sustained injury on his left side forehead and he died on the spot. The pillion rider/Kannappan also sustained injury on his head and he was taken to Hospital in Ambulance, but he died in the Hospital. The complaint was given by the father of the deceased Balaji, wherein it is clearly stated that an un-identified vehicle hit the two-wheeler and caused the accident.

9. To rebut the allegations contained in the FIR, there is no evidence on the side of the claimants. The evidence of PW2 is not believable and it was rightly rejected by the Tribunal. We have also perused the evidence of PW1 and PW2, from which, it is clear that their presence in the place of occurrence at the time of the the accident, is doubtful. Therefore, the Tribunal rightly rejected their evidence. Further, there is no supporting evidence to prove the negligence on the part of the first respondent and he himself died on the spot.

10. Apart from the above aspects, the father of the deceased Perumal by submitting an application before the Tahsildar got some amount under Solatium Fund maintaining under Section 161 of the Motor Vehicles Act, which is evident from the award passed by the Tribunal in its judgment.

11. From the evidence on record, it is clear that the accident in this case is a case of hit and run. So the claim of compensation before the Motor Accident Claims Tribunal is not



maintainable. Hence, the Tribunal rightly dismissed the claim petition.

12. We find no merit in the appeal filed by the claimant. The appeal fails and the same is dismissed. No costs.

SD/-
ASSISTANT REGISTRAR

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SUB ASSISTANT REGISTRAR

pvs
To

The VI Court of Small Causes,
Motor Accidents Claims Tribunal,
Chennai.

+1cc to Mr.A.A.Venkatesan, Advocate Sr.29988
+2cc to Mr.B.Siva Kollappan, Advocate Sr.32105 [21/06/2022]

C.M.A. No.2167 of 2021

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srg 17/05/2022