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CMA.No.2711 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.09.2022

CORAM:

THE HONOURABLE **MS.JUSTICE V.M.VELUMANI**
and
THE HONOURABLE **MR.JUSTICE T.V.THAMILSELVI**

C.M.A.No.2711 of 2021

- 1). Farida,
- 2). Mohammed /Ismail,

... Petitioners/Appellants

Vs.

- 1). V.Aakash Kumar,
- 2). IFFCO-TOKIO General Insurance Company,
No.28, (Old No.195), North Usman Road,
T.Nagar, Chennai-17.

... Respondents/ Respondents



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Prayer : This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act 1988 against the Judgment and Decree dated 20.03.2019 made in M.C.O.P.No.4089 of 2014 on the file of the Motor Accident Claims Tribunal, (II Small Causes Court), Chennai.

For Appellants : Mr. K.Varadhakamaraj

For respondents : Mr. R.Rathna Thara,
for R2

J U D G M E N T

(Judgment of the Court was delivered by V.M.VELUMANI,J.)

This Civil Miscellaneous Appeal has been filed by the appellants/claimants against the judgment and decree dated 20.03.2019 made in M.C.O.P.No.4089 of 2014 on the file of Motor Accident Claims Tribunal, II Small Causes Court, Chennai.

2.The appellants herein filed the said claim petition claiming a sum of Rs.35,00,000/-, as compensation for the death of their son Riyaz @ Mohammed Riyaz, who died in the accident that took place on 28.03.2014.



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3. According to the appellants, on the date of accident i.e., on 28.03.2014 at about 21.15 hrs, while the deceased was riding his motor cycle bearing Registration No.TN 05-AU-6064 from his college to his house, near Basin Bridge Salai, the rider of the motor cycle bearing Registration No.TN-03-F4524, who was coming in the opposite direction, crossed the yellow line in a rash and negligent manner and dashed against the deceased. In the said accident, the deceased sustained multiple injuries all over the body and died on 02.04.2014. Therefore, the parents of the deceased filed the above claim petition claiming compensation against the respondents.

4. The first respondent remained ex-parte before the Tribunal.

5. The second respondent/ Insurance Company filed counter statement denying the averments made in the claim petition and stated that from the police records, it is evident that the deceased on 28.03.2014 drove the motorcycle bearing Registration Number TN 05 AU 6064 in a rash and negligent manner along with a pillion rider and while nearing Basin Bridge, attempted to overtake a MTC Bus in a reckless manner and hit against the



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motorcycle bearing Registration Number TN 03 F 4524, which was coming in the opposite direction and succumbed to head injuries. Since, the deceased himself is the Tort Feasor, he is not a third party and is not envisaged to be covered under Section 147 of the Motor Vehicles Act. The police after due investigation have submitted the final report against the deceased and closed the case as action dropped. The Insurance Company also denied the age, avocation and income of the deceased. The owner and the insurer of the motorcycle, which was driven by the deceased, are necessary parties to be impleaded. Hence, the petition is bad for non-joinder of necessary parties. In any event, the compensation claimed by the appellants is excessive and prayed for dismissal of the claim petition.

6. Before the Tribunal, the 2nd claimant examined himself as P.W.1, examined one Mohammed Isak, eye witness to the accident, as P.W.2 and 12 documents were marked as Exs.P1 to P12. The 2nd respondent/Insurance Company examined one Sampath, Traffic Investigation Officer, as RW1 and 3 documents were marked as Exs.R1 to R3 .



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7. The Tribunal, considering the pleadings, oral and documentary evidence, dismissed the claim petition holding that the deceased himself was rash and negligent and he himself was responsible for the accident. Hence, the respondents are not liable to pay the compensation to the appellants.

8. Aggrieved over the said award, the appellants/claimants has come up with the present appeal.

9. Though notice has been served on the first respondent and his name is printed in the cause list, there is no representation for him either in person or through counsel.

10. Heard the learned counsel appearing for the appellants/Claimants and the learned counsel appearing for the second respondent/Insurance Company and perused the materials available on records.

11. From the materials on record, it is seen that it is the case of the appellants that while their son Riyaz @ Mohammed Riyaz was riding in



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motorcycle bearing Registration No.TN 05 AU 6064 from his College, at Royapettah to his house, at Vyasarpadi basin bridge, the rider of the motorcycle cycle bearing Registration No.TN 03-F 4524, belonging to the first respondent, came in a rash and negligent manner and dashed on the motorcycle driven by the said Riyaz @ Mohammed Riyaz and caused the accident. In the said accident, the said Riyaz @ Mohammed Riyaz sustained grievous injuries and succumbed to injuries. To substantiate their case, the 2nd appellant examined himself as P.W.1 and examined one Mohammed Isak, eye witness to the accident, as P.W.2. They marked the First Information Report as Ex.R.1, which was registered against the deceased.

12. On the other hand, it is the case of the 2nd respondent that it is the deceased, who drove the motorcycle in a rash and negligent manner and dashed against the motor cycle bearing Registration No.TN 03 F 4524, belonging to the first respondent and caused the accident. To substantiate their case, they examined one Sampath, Traffic Investigation Officer as RW1, and relied on Ex.P.1 First Information Report, Ex.R1-Rough Sketch, Ex.R2-Action dropped Report and Ex.R.3-Final Report.



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13. From the materials on record, it is seen that the First Information Report was registered against the deceased. The second respondent examined the Sub-Inspector of Police as RW1, who deposed that after investigation, it was found that the accident occurred only due to the rash and negligent riding of the deceased and closed the case as mistake of fact. Both the appellant and the 2nd respondent produced the Rough Sketch and the same was marked as Ex.P.2 and Ex.R1 respectively. In Ex.P.2, it has been mentioned that the deceased was proceeding in his motorcycle TN 05 AU 6064 from North to South while the first respondent was proceeding from South to North and crossed the center line and dashed on the motorcycle driven by the deceased. On the other hand, in Ex.R.1, it has been shown that the deceased was proceeding from South to North in the motorcycle bearing Registration No. TN 05 AU 6064 and the first respondent was proceeding in his motorcycle from North to South. As per Ex.R1, the deceased crossed the center line and dashed on the motorcycle driven by the first respondent. Ex.P.1 First Information Report, Ex.R.1 Rough Sketch, Ex.R.2, Action dropped Report, Ex.R.3 Final Report were attested by the Inspector of Police, Traffic Investigation, Kilpauk Police Station. The 2nd respondent has examined the



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Traffic Investigation Officer as R.W.1 and proved Exs.R1 to R.3, whereas

Ex.P.2 Rough Sketch, produced by the appellants, which was attested by the

Sub-Inspector of Police, Traffic Investigation Wing , Kilpauk Police Station.

The appellants have not examined the Sub-Inspector of Police, who prepared

Ex.P.2 Rough Sketch to prove their case.

14. RW1 deposed that there is no rough sketch available in their records similar to Ex.P.2. P.W.2 the alleged eye witness has admitted that there is no evidence to prove that he was present at the scene of occurrence at the time of accident. He has not given any complaint to the Police that the accident occurred due to the negligence of the rider of the first respondent's motorcycle. The appellants have also not given any objection to the First Information Report registered against the deceased. Admittedly, according to the appellants, at the time of accident, one pillion rider travelled along with the deceased. But, the appellants have not examined the pillion rider, who travelled along with the deceased at the time of accident, who was the best witness. When the deceased was travelling from Royapettah to Viyasarpadi, he would be travelling only from South to North and not from North to South.



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The Tribunal, after considering both the Ex.P.2, Rough Sketch produced by the appellants, Ex.R.1 Rough Sketch produced by the 2nd respondent and the evidence of P.W.1, accepted the Rough Sketch Ex.R.1 and held that the accident occurred only due to rash and negligent driving by the deceased as he crossed the center meridian and invited the accident. Considering the entire materials on records, the Tribunal rightly dismissed the claim petition filed by the appellants. There is no error in the dismissal order passed by the Tribunal warranting interference by this Court.

15.In the result, this Civil Miscellaneous Appeal is dismissed confirming the order passed by the Tribunal in MCOP No.4089 of 2014, dated 20.03.2019. Consequently, connected Miscellaneous Petition is closed.
No costs.

(V.M.V., J) (TV.T.S., J)
21.09.2022

mrp

To

- 1.The II Small Causes Court,
Motor Accident Claims Tribunal,
Chennai.
- 2.The Section Officer
VR Section
High Court, Madras.

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**V.M.VELUMANI,J.
and
T.V.THAMILSELVI ,J.**

mrp

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