



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 14.02.2022

PRONOUNCED ON : 24.03.2022

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

C.M.A(MD)No.617 of 2014

1.S.Kandasamy

2.K.Kala

3.K.Amarnath

.. Appellants/Claimants

Vs.

1.Shree Murugan Enterprises
Represented through its Manager,
No.391C, Nedumaran Nagar,
Dharmapuri-635 701.

2.The Divisional Manager,
M/s.National Insurance Co. Ltd.,
3-A, North Veli Street,
Madurai-1.

.. Respondents/ Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the fair and decretal order dated 06.09.2010 made in M.C.O.P.No.1654 of 2007, on the file of the Motor Accidents Claims Tribunal/I-Additional District Judge, Madurai.

For Appellants : Mr.F.X.Eugene

For R1 : Mr.C.Jegannathan

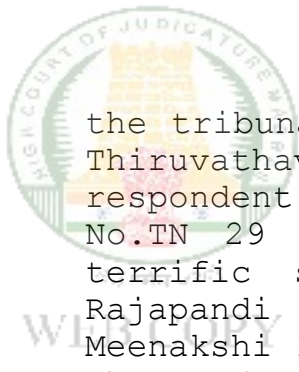
For R2 : Mr.K.Murugesan

JUDGMENT

The unsuccessful claimants are the appellants herein.

2. For the sake of convenience, the parties are referred to as per the ranking before the tribunal.

3.The legal representatives of one deceased Arunkumar, who was working as a quarry labourer filed M.C.O.P.No.1654 of 2017 alleging that their son sustained injury in the above transport accident, subsequently died. PW1, the father of the deceased deposed before



the tribunal that while the deceased was working at Sindhu Granite, Thiruvathavoor quarry, on 20.05.2007, at about 2.30 p.m., the 1st respondent's driver drove the Tipper Lorry bearing registration No.TN 29 H 0279 in reverse in a rash and negligent manner in terrific speed and dashed against the deceased and also one Rajapandi sustained fatal injuries. The deceased was taken to Meenakshi Mission Hospital, Madurai, where first aid was given and then referred to Government Rajaji Hospital, Madurai, where he died on 20.06.2007. Hence, the claim petition.

4(a). The specific case of the second respondent insurance company is that the deceased sustained injuries in a different circumstances, in particular, due to fall from the great height while working in a quarry and the first respondent vehicle was falsely implicated in order to enable the petitioner to claim for the death of the deceased.

4(b). Before the Tribunal, the father of the deceased was examined as PW1 and marked Ex.P1, Ex.P2, Ex.P10 and Ex.R1 and on behalf of the Insurance Company, on court summons RW1, Dr.Sumathi was examined and Ex.R1-copy of the Accident Register received from the Government Rajaji Hospital, Madurai was marked.

5. The trial Court dismissed the claim holding that the road Transport Accident injury is not the cause of the death and accordingly dismissed the MCOP. Hence, the present appeal.

6. Learned counsel for the appellants/claim petitioners could contend that the fact finding of the trial court that the deceased fell down from 60 feet height and sustained injuries and the injuries mentioned in the claim petition does not match with the narration of the accident is erroneous and there is no circumstances for such a finding and also commented upon the evidence of RW1.

7. The learned counsel for the second respondent/insurance company made submission in support of the award passed by the tribunal.

8. On perusal of the oral and documentary evidence and finding that PW3-Doctor, who had issued Ex.P10-case sheet maintained by the Meenakshi Mission Hospital, the trial Court has made a finding that the case books at the said hospital are not properly maintained by comparing the subsequent case sheets are prior in time of the accident and admission is also goes into contrary factors and rightly disbelieved Ex.P10 by assigning the reason that the subsequent entries in case sheet maintained by such private hospital appears to be anterior in point of time for admission in the hospital and hence disbelieved.

9. After perusal of the originals from the lower Court records, I do not find any error on such finding.



10(a). It is pertinent to mention at this juncture that the plea of the insurance company is, the vehicle owner being the employer of the deceased being wanted to have an unlawful enrichment to the employee by falsely implicating the vehicle in order to substantiate the same, they have raised the specific plea that the injury sustained by the deceased is different from the manner in which spoken to by PW1. To substantiate the same, they have summoned RW1, Dr.Sumathi.

10(b). On perusal of evidence of RW1 coupled with Ex.R1 that the person, who came along with the deceased called himself father of the deceased and deposed that around 2.00 p.m., while the deceased was worked in Sindhu Granite quarry, fell down from 60 feet height and sustained injuries. He also admitted that in the reference letter received from the private hospital, Road Transport Accident was mentioned for the reasons recorded in the preceding paragraphs, the tribunal has rightly disbelieved Ex.P10 and therefore, the same does not advance the case of the claim petitioner. As per the evidence of RW1-Dr.Sumathi coupled with Ex.R1, I find that the father, who brought the injured to Government Rajaji Hospital have stated to RW1-Doctor that his son fell down from 60 feet height in the quarry. In view of the specific evidence by RW1, who has no grudge against the claim petitioner and the earlier submission being recorded by the Government doctor RW1 in Ex.R1 and for the reasons stated in the preceding paragraphs for disbelieving the evidence of Ex.P10, I find that the claim petitioner has not produced any positive evidence to show the deceased had sustained injury in the Road Transport Accident.

11. On the contrary, the second respondent/insurance company has clearly demonstrated before the tribunal that the injury was only due to fall from 60 feet height, not by the involvement of any motor accident and accordingly, since the death is not arising out of motor accident, the claim under Motor Vehicles Act is not maintainable and hence, the order of dismissal made by the tribunal, for different reasoning, is hereby confirmed.

12. In the result, this Civil Miscellaneous Appeal is dismissed. No Costs.

Sd/-

Assistant Registrar(CS-II)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

PJL

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To

1. The I-Additional District Judge/
Motor Accidents Claims Tribunal,
Madurai.

2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai. (2 copies)

+1 CC to M/s.F.X.EUGENE, Advocate (SR-14025[F] dated 24/03/2022)

+1 CC to M/s.C.JEGANATHAN, Advocate (SR-14067[F] dated 24/03/2022)

**JUDGMENT MADE IN
C.M.A(MD) No. 617 of 2014
24.03.2022**

svs (CO)
TR(04.04.2022) 4P 6C