



C.M.A.(MD)No.181 of 2017

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 16.09.2022

DELIVERED ON : 20.09.2022

CORAM:

THE HONOURABLE MRS.JUSTICE J. NISHA BANU

and

THE HONOURABLE MR.JUSTICE N. ANAND VENKATESH

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1.Rajendran

2.Thavamanidevi @ Devi

3.Sangeetha meenakshi

4.Sankarbabu

.. Appellants/Claimants

Vs.

1.Sreedharan

2.The Oriental Insurance Company,
rep. by its Divisional Manager,
No.4, Bharathidasan Street,
Cantonment, Trichy.

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3.United India Insurance Company,
rep. by its Regional Manager,
1783/84, South Main Street,
Thanjavur.

4.Annadurai .. Respondents/Respondents

[R-1 was set exparte before the Tribunal.
Hence notice may be given up against
R-1]

PRAYER: Civil Miscellaneous Appeal filed under Section 173(1) of the Motor Vehicles Act, 1988, against the award and decree, dated 07.10.2016 made in M.C.O.P.No.293 of 2007, on the file of the Motor Accidents Claims Tribunal/III-Additional District and Sessions Judge, Thanjavur at Pattukkottai.

For Appellants	: Mr.D.Sivaraman
For Respondent No.2	: Mr.E.Chandrasekaran
For Respondent No.3	: Mr.A.S.Mathialagan
For Respondent No.4	: No appearance



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JUDGMENT

J.NISHA BANU, J.
and
N.ANAND VENKATESH, J.

The claimants have filed this appeal against the order passed by the Motor Accident Claims Tribunal (MACT)/III-Additioanl District and District Judge, Pattukottai, made in M.C.O.P. No.293 of 2007, dated 07.10.2016, dismissing the claim petition seeking for compensation for the demise of one, Santhosh Babu in an accident.

2. The case of the claimants is that the deceased Santhosh Babu, who is the son of the 1st and 2nd claimants and the brother of the 3rd and 4th claimants, had completed his MBBS course and was doing House Surgency. On 07.06.2006, at about 11.40 p.m., when he was driving the car on the Thanjavur-Pattukottai Highways, near Pappanadu Thippiyakudi crossroad, a mini lorry is said to have come in the opposite direction and it was driven in a rash and negligent manner and it dashed on the right side of the car driven by the deceased and the deceased is



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said to have lost control and he had hit a banyan tree on the roadside. It was further stated that one, Jeganathan also accompanied the deceased in the car. Due to the accident, both Santhosh Babu and Jeganathan sustained grievous injuries and Santhosh Babu died on the spot.

3. The further case of the claimants is that the dead body of Santhosh Babu was taken to Pattukottai Government Hospital and the said Jeganathan also received treatment in the very same hospital. Postmortem was conducted and it was confirmed that the death was due to the accident.

4. A complaint is said to have been given by Jeganathan, who accompanied the deceased, at about 6.00 a.m. on 08.06.2006. Based on the same, an FIR came to be registered in Crime No.92 of 2006 for an offence under Section 304-A IPC.



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5. In the above circumstances, the claim petition was filed seeking for compensation of a sum of Rs.1,00,00,000/-(Rupees one crore only).

6. The Tribunal, on considering the facts and circumstances of the case and after analysing the oral and documentary evidence, came to a categoric conclusion that the entire case is false and it is a made up case, orchestrated by the claimants to conceal the gross negligence on the part of the deceased Santhosh Babu and to make an exorbitant claim by way of compensation. Aggrieved by the same, the claimants have filed the present appeal.

7. The learned counsel for the appellants submitted that the FIR was registered at the earliest point of time on the basis of the complaint given by Jeganathan, who accompanied the deceased. It was further submitted that the post-mortem certificate of the deceased clearly reflected the fact that the deceased died due to shock and haemorrhage,



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by virtue of serious injuries sustained in the vital organs at the time of the accident. The learned counsel further submitted that the FIR was investigated and it is clear from Ex.P17, which was the report of the Additional Superintendent of Police(Crime), Thanjavur, that the accident took place only due to the rash and negligent driving of the lorry and to come to this conclusion, the statement of the witnesses was recorded and the relevant documents like the post-mortem report, report of the motor vehicle inspector, etc., was considered and this conclusion was arrived at. Ultimately, when the final report was filed, it was not taken on file by the concerned Court since it was filed beyond the period of limitation and it was barred under Section 468 Cr.P.C.

8. The learned counsel for the appellants further submitted that the Insurance Company raised a suspicion about the genuineness of the very accident and hence, an FIR came to be registered on the complaint given by the Insurance Company in Crime No.4 of 2012, for offence of cheating under Section 420 IPC. The investigation was once



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again taken up by the District Crime Branch and it was once again clearly established that the accident took place in the manner in which it was portrayed by the claimants and the FIR registered based on the complaint given by the Insurance Company was closed as 'mistake of fact' and the closure report was also filed. This document was marked as Ex.P19. RCS notice was also served on the Insurance Company and no protest petition was filed. Thereby, the closure report was taken on file and the case was closed. The Insurance Company was not satisfied even with the above report and they made an independent investigation through their in-house investigator and based on his report (Ex.P18), a further complaint was given to the Deputy Inspector General of Police, CBCID and other high level officials (Exs.R23 and R24). In none of the enquiry, the investigation conducted by the police was faulted.

9. The learned counsel for the appellants submitted that the Motor Vehicle Inspector had submitted his report, after examining both the car and the mini lorry and an eye witness (P.W- 2), had spoken about



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the incident. Hence, on a cumulative assessment of the entire evidence that was placed on record, the accident was established and the Tribunal went wrong in dismissing the claim petition and denying the compensation for the claimants. The learned counsel, in order to substantiate his submissions, placed reliance upon the judgment of the Hon'ble Supreme Court in :

a) ***Bimla Devi and others v. Himachal Road Transport Corporation and others***, reported in **2009 (13) SC 530**.

b) ***Ravi v. Badrinarayan and others***, reported in **2011 (4) SC 693**.

c) ***Sunita and others v. Rajasthan State Road Transport Corporation and others***, reported in **2020 (13) SC 486**.

10. Per contra, the learned counsel appearing on behalf of the Insurance Company submitted that the Tribunal had analysed the entire evidence threadbare and had come to a categorical conclusion that a false claim had been made by the claimants. The learned counsel



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submitted that the findings of the police officials is not binding on the Tribunal and the Tribunal had independently analysed the evidence and found the entire story projected by the claimants regarding the accident to be totally unbelievable and cooked up. The learned counsel submitted that this is a clear case where the claimants had desperately attempted to cover up the negligence of the deceased Santhosh Babu and created evidence only for the purpose of making a false claim and unjustly enriching themselves with a huge compensation amount.

11. This Court has carefully considered the submissions made on either side and the materials available on record.

12. This Court is conscious of the settled principle of law that in motor accident claims, the Court is not expected to take a hyper-technical stand and the standard of proof to be borne in mind is the preponderance of probabilities and not the strict standard of proof beyond all reasonable doubts. This Court has also bear in mind that the Motor



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Vehicles Act is a beneficial legislation and hence, where the accident is proved, it should normally be followed with a compensation unless the Court finds the entire version projected by the claimants to be false and unbelievable. This Court is also aware of the settled principle that a Tribunal is expected to independently assess the evidence and it is not bound by the findings of the police officials nor is bound by the findings of a Criminal Court. Keeping these principles in mind, this Court will test the tenability of the award passed by the Tribunal.

13. There is no dispute with regard to the fact that the car that was driven by the deceased had hit a banyan tree on the roadside and the deceased died on the spot due to serious injuries sustained. It is clear from the post-mortem report that the deceased died due to shock and haemorrhage. The bone of contention in the present case is the manner in which the accident had taken place and whether the story projected by the claimants is substantiated by the evidence available on record.



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14. The deceased Santhosh Babu is said to have been accompanied by one Jeganathan in his car. P.W-1, who is the father of the deceased clearly states in his evidence that he went to Thanjavur General Hospital around 12.00 to 12.30 a.m., on 08.06.2006 and he also found Jeganathan being given treatment in the hospital for the injuries sustained by him. The FIR registered by the police in Crime No.92/2006 was based on the complaint given by Jeganathan at about 6.00 a.m. on 08.06.2006. If Jeganathan had sustained serious injuries and was receiving treatment in the General Hospital, it is quite unbelievable that he will go over to a police station which is 15 Kms., away from the General Hospital and give a complaint. If really Jeganathan sustained injuries in the accident, there was absolutely no reason as to why not a single medical record of Jeganathan was marked before the Court. The claimants came up with a version that Jeganathan died 10 months later due to some ailment and hence, he was not able to be produced before the Tribunal. If Jeganathan is known to the family of the claimants, nothing stopped the claimants from atleast marking the death certificate of Jeganathan to substantiate



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that there was really a person named Jeganathan and he died on a particular date.

15. P.W-1, who was examined in this case as an eye witness, categorically states in his cross-examination that immediately after the accident, he went near the car and he found only the deceased Santhosh Babu inside the car. The Tribunal, after analysing all these evidence, came to a categoric conclusion that the character Jeganathan was an imaginary person, who was introduced in the story and there was not an iota of evidence to prove about the existence of such a person.

16. The next important evidence to be taken into consideration is the evidence of P.W-2, who is said to have seen the accident. There are lots of contradictions in the evidence of this witness. This witness states that he is not aware whether the car and lorry dashed against each other at the time of accident. This witness also does not know anything about the so-called mini lorry, which had hit the car and



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fled away from the scene of occurrence. He also states in his cross-examination that the accident took place at 10.40 p.m. and this was informed by P.W-2 to the Pappanadu Police Station through phone and the police were present at the scene of occurrence. He also states that he never gave any complaint to the police on the date of accident or thereafter. If really P.W-2 had informed the police, there was absolutely no reason for the police to wait for Jeganathan to come and give a complaint. The Tribunal has found that P.W-2 belonged to Nemily North village and this village is situated around 1 km., from Pattukottai Thanjavur road. The road, which leads to this village is nearly 100 metres away from the place of occurrence and there was absolutely no reason for P.W-2 to be present at the accident spot at 11.40 p.m., in the night. He is not able to give any reason as to why he was present at that time in the scene of occurrence. After analysing evidence of PW-2, the Tribunal came to a categoric conclusion that the evidence of P.W-2 is totally unbelievable and it lacks credibility.



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17. The documents that are relied upon by the claimants is shrouded with unexplainable contradictions and these documents only further establishes the falsity in the case of the claimants.

18. The FIR that was registered in Crime No.92/2006 shows the name of the deceased Dr.Santhosh Babu as the accused person instead of showing the mini lorry driver as an accused. Even if the name is not known, it should have mentioned as the 'unknown accused', who drove the mini lorry. This FIR reaches the jurisdictional Magistrate Court after nearly 11 days. It is true that delay in sending the FIR to the Court by itself cannot be put against the claimants. However, a delay in the present case has a lot of significance. As stated above, the deceased is shown as the accused person in the first page of the FIR and whereas, in the following page, the entire allegation has been made against the mini lorry. This makes it apparent that sufficient time was taken to deliberate and write a believable story. However, what was missed was that the first page shows the deceased as the accused and the next page shows the driver of



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the mini lorry to be an accused. The Tribunal took pains to go into this issue by comparing the FIR and the complaint marked as Exs.C1 and C2 and it is found that the deceased was shown as an accused for an offence under Section 304-A IPC. It defies common sense as to why the deceased should be shown as an accused, who have committed an offence under Section 304-A of IPC, instead of the lorry driver. No wonder one police official after another wanted to cover up this and they were giving favourable reports to get over a grave error that happened while cooking up the FIR.

19. The case as projected by the police and the claimants talks about a death that has taken place and that too, the death of an aspiring doctor. Hence, all seriousness will be shown to take the criminal prosecution to its logical end. However, everything fizzled out when the prosecution came up with the story that final report was not taken on file since taking cognizance of the same was barred by limitation. What is barred under Section 468 Cr.P.C is not an absolute bar and even beyond



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the limitation period, there is always scope for filing a petition under Section 473 Cr.P.C, seeking for extension of the period of limitation. In the first place, it is not known as to why it took more than three years for laying the final report in this case. Even if there is a delay, if the prosecution and the claimants had taken the demise of Santhosh Babu seriously, they could have easily filed a petition seeking for extension of limitation and any Court would have condoned and taken cognizance of the final report. The fact that this effort was not made shows that the claimants were not interested in taking the criminal prosecution to its logical end and they were more interested in getting the compensation. This factor was rightly put against the claimants by the Tribunal.

20. The earliest document that is available is the accident register marked as Ex.R5. This document shows that the deceased was brought by the Police Constable belonging to Pappanadu Police Station to the Government Hospital at about 12.45 a.m. Whereas, the complaint marked as Ex.C2 reads as if Jeganathan had taken the deceased Santhosh



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Babu to the Government hospital, Pattukottai. This is one more glaring fact which shows that the presence of Jeganathan was not even mentioned in the accident register and it only further establishes the falsity of the presence of Jeganathan at the time of the accident.

21. The report of the motor vehicle inspector, which was marked as Exs.R6 and C3 and which was prepared on the same day, ie., on 13.06.2006 pertains to the car and the mini lorry that was involved in the accident. Insofar as the report pertaining to the car, it is completely handwritten by the Inspector. Whereas when it came to the mini lorry, a portion of it is typed and there are a lot of insertions found in this document, which is done through handwriting. If the two reports were prepared on the same day, there is no reason as to why there must be so much of variations in preparing the report. This was analysed thoroughly by the Tribunal and the report itself was rightly doubted and rejected.



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22. It is very clear from the evidence available on record that the entire case projected by the claimants is cooked up story and the same has been analysed in detail by the Tribunal while rejecting the claim petition. The Tribunal was perfectly right in commenting about the claimants for their conduct inspite of the fact that they are doctors, who are expected to act in a fair manner and whereas they have indulged in fabricating evidence for the purpose of getting compensation and at the cause of the life of the deceased, who is none other than the son of the first and second claimants and the brother of the third and fourth claimants. This Court appreciates the effort taken by the Tribunal in finding out the truth and giving sufficient reasons as to why it arrived at a conclusion that it is a false claim.

23. This Court does not find any illegality or infirmity in the order passed by the Tribunal and it does not require the interference of this Court. Considering the conduct of the claimants/appellants and the false claim made by them, which does not befit their educational



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qualifications and the noble profession in which they are involved, this Court is inclined to impose exorbitant cost of Rs.1,00,000/-(Rupees one lakh only) payable by the claimants/appellants to the Mediation and Conciliation Centre attached to the Madurai Bench, within a period of four (4) weeks from the date of receipt of a copy of this order.

24. In the result, this Civil Miscellaneous Appeal is dismissed with cost.

[J.N.B., J.] [N.A.V., J.]
20.09.2022

Index : Yes/No
Internet : Yes
PJL

To

1. The III-Additional District and Sessions Judge/
Motor Accidents Claims Tribunal,
Thanjavur at Pattukkottai.

2. The Mediation and Conciliation Centre,
Madurai Bench of Madras High Court,
Madurai.

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**Pre-delivery Judgment made in
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