



C.M.A.No.1134 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.10.2023

CORAM :

THE HONOURABLE MR. JUSTICE **M. DHANDAPANI**

C.M.A.No.1134 of 2012

1. Muthuvedi
 2. Chandra
 3. Sevatha
- ...Appellants

Vs.

1. P.Murugushola Thirumavalavan
 2. Branch Manager,
National Insurance Co. Ltd.,
Branch Office, 305, Bangalore Road,
Krishnagiri – 635 001.
- ...Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 as against the decree and judgment dated 21.02.2006 made in MCOP.No.775 of 2003 on the file of the Motor Accident Claims Tribunal, (Additional Special Court) Krishnagiri.

For Appellants : Mr.Mukund R.Pandian

For Respondents : Mr.S.Vadivel, for R2



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JUDGEMENT

WEB COPY The present appeal has been filed to set aside the Judgement and Decree dated 21.02.2006 made in MCOP.No.775 of 2003 on the file of the Motor Accident Claims Tribunal, (Additional Special Court) Krishnagiri.

2. The case of the appellants is that, on 19.08.2002, at about 6.00 a.m., when the deceased Ramamoorthy was driving the Lorry bearing Regn.No.KA-01-A-1129, owned by the 1st respondent, insured with the 2nd respondent, in Panapattu to Bangalore NH-13 Road with plastic load, a lorry bearing Regn.No.HR-55-A-542, driven by its driver in a rash and negligent manner, which came in the opposite direction, dashed against the lorry driven by the deceased, as a result of which, the deceased sustained fatal injuries all over his body and died on spot. Thereby, the appellants/dependants of the deceased filed a claim petition claiming a compensation of Rs.10,00,000/-. After contest, the tribunal, vide impugned judgment, dismissed the claim made by the appellants. Aggrieved by the said order, the claimants have preferred this Appeal.

3. Learned counsel for the appellants submitted that, the above



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said accident happened solely due to the rash and negligent driving of the driver of the offending vehicle, due to which, the deceased lost his life. Further, the appellants/claimants have filed the claim petition under Section 163-A of the Motor vehicles Act, 1988 (in short 'MV Act'), which mandates that, there is no necessity for the claimants to prove that they are affected, for the purpose of claiming compensation. However, without appreciating the said provision of law, the tribunal had mechanically had dismissed the claim made by the claimants, which required to be interfered with and necessary compensation has to be granted in favour of the appellants.

4. Per contra, the learned counsel appearing for the 2nd respondent submitted that, though Section 163-A of the Motor vehicles Act, 1988 (in short 'MV Act') mandates that, there cast no duty on the claimants to prove the manner in which the accident has happened but it cannot be enforced against the insurer of the vehicle driven by the deceased, but it is relatable only to the vehicle which had been driven in rash and negligent manner. Therefore, the said fact has been properly appreciated by the tribunal and had rightly dismissed the claim made by the claimants



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on the ground that, though the above said accident happened solely due to the rash and negligent driving of the driver of the offending vehicle, the claimants have failed to implead the owner and the insurer of the offending vehicle as necessary parties in the claim petition. Accordingly, he prayed for dismissal of this Appeal.

5. Heard learned counsel for the appellants and the learned counsel appearing for the 2nd respondent and perused the material documents placed on record.

6. The rash and negligent driving of the driver of the offending vehicle is not put in issue. The only issue that has been pleaded before the tribunal which has been rejected is that, Section 163-A of the MV Act does not cast any liability on the claimants to prove the factum of the accident. In the case on hand, the tribunal had clearly held that the above said accident happened solely due to the rash and negligent act of the driver of the offending vehicle, which is evident from the oral and documentary evidence placed before the tribunal. In such situation, merely because the Section 163-A of the MV Act does not cast any



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liability on the claimants to prove the factum of the accident for claiming the compensation, the said claim cannot be enforced against the vehicle driven by the deceased, which was insured with the 2nd respondent but the said provision can be enforced only against the offending vehicle which has been driven in a rash and negligent manner.

7. Giving a finding contrary to the intent and purport of Section 163-A of the MV Act could be against the interest of justice, inspite of the fact that the MV Act is a benevolent legislation. If at all the claimants have any grievance with regard to claiming compensation, they have to move a claim petition against the owner and insurer of the offending vehicle and thereby the claim made by the appellants/claimants as against the vehicle driven by the deceased cannot be maintained. The said fact has been properly considered by the tribunal while dismissing the claim petition filed by the appellants, in which, this Court does not finds any fault with and thereby, is not inclined to interfere with the same.

8. For the reasons aforesaid, this Appeal stands dismissed. The



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appellants/claimants are at liberty to file fresh claim petition as against the owner and insurer of the offending vehicle in the manner known to law, if all the necessary particulars are available with them. Further, the period during which the claim was pending both before the tribunal and before this Court shall stand excluded for the purpose of limitation, if any. There shall be no order as to costs in this appeal.

06.10.2023

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Index : Yes / No
Speaking order : Yes / No
NCC : Yes / No

To

- 1.The Motor Accident Claims Tribunal (Additional Special Court),
Krishnagiri.
- 2.The Section Officer, V.R.Section, High Court, Madras.



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M.DHANDAPANI, J.

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