



C.M.A.No.2991 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **30.10.2023**

CORAM:

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

C.M.A.No.2991 of 2013

1. Manonmani
2. Rajavelu

... Appellants

Vs.

1. Santhi
(R1 remained ex parte before the Tribunal)
2. The Divisional Manager,
Royal Sundaram Alliance Insurance Company Limited,
No.45 & 46, Whites Road,
Chennai.

... Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 18.04.2013 and made in M.A.C.T.No.122 of 2009 on the file of Motor Accident Claims Tribunal, District Judge, Thiruvannamalai.

For Appellants : Ms.A.Subadra for
Ms.M.Malar

For Respondents : Mr.K.Vinod for R2

R1 Ex-parte before Tribunal



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JUDGEMENT

The Civil Miscellaneous Appeal is filed against the judgment and decree dated 18.04.2013 and made in M.A.C.T.No.122 of 2009 on the file of Motor Accident Claims Tribunal, District Judge, Thiruvannamalai.

2. It is the case of the appellants that on 26.11.2008, when the deceased was driving his two wheeler bearing registration No.TN 25 J 1204 on the left side of the road, the lorry bearing registration No.KA 01 C 3654 coming in the same direction driven by its driver in a rash and negligent manner suddenly applied brake, due to which the vehicle of the deceased dashed against the lorry. In the said accident, the deceased suffered grievous injuries, inspite of the deceased being taken to the hospital and treatment being given, the deceased claimed to have died in the hospital. As the accident had taken place due to the rash and negligent driving of the offending vehicle, the claimants being the legal heirs of the deceased claimed compensation before the Tribunal by filing claim petition.



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3. Before the Tribunal the claimants examined two witnesses viz. P.W.1 and P.W.2 and marked exhibits P.1 to P.4. On the side of second respondent R.W.1 was examined and marked exhibits R1 to R5. on their behalf. On the basis of the oral and documentary evidences, the award was passed by the Tribunal dismissing the claim petition filed by claimants. Aggrieved by the same, the present appeal has been filed by the claimants.

4. The learned counsel appearing for the claimants submit that the Tribunal has not properly appreciated the FIR except P.1 in which it has been mentioned that the lorry was standing in the middle of the road, but erroneously on the basis of Exs.R3 and R4, the Tribunal has arrived at a conclusion that the lorry was standing in the extreme left of the road and that it is only due to the rash and negligent driving of the deceased, the accident had happened. The said finding recorded by the Tribunal is not in consonance with the oral and documentary evidence. Therefore, the fastening of liability on the deceased is liable to be set aside.



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5. Per contra the learned counsel appearing for the second respondent / insurance company submits that Exs.R3 observation Mahazar and R4 Rough Sketch clearly establishes that the lorry was stationary and it was only the deceased who had driven the vehicle in a rash and negligent manner and dashed against the lorry. Therefore, the accident happened is not as per the projection in the FIR and appreciating all the above facts, the Tribunal arrived at right conclusion which does not require interference.

6. Heard the learned counsel for the appellants and the learned counsel appearing for the second respondent and perused the materials placed before this Court.

7. A perusal of the FIR which has been recorded by P.W.2 reveals that the lorry was coming in the same direction and when it applied sudden brake the deceased dashed against the said lorry and sustained injuries of which he died. It is to be pointed out that the FIR is not a conclusive proof



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nor is an encyclopedia for deciding the case. Further, FIR is not a substantive piece of evidence and it has to be substantiated by acceptable positive legal evidence. The FIR is only to set the criminal law in motion and no further.

8. In this background, the other backgrounds namely Exs.R3, R4 and R5 were analysed and the observation mahazar reveals that the lorry is shown to be stationary on the mud portion. The rough sketch also reveals that the lorry was stationary, except R.5 the final report reveals that there was some defect on the lorry which was attended to by parking the lorry on the mud road. The said observation mahazar, rough sketch and final report have not been attacked by the deceased by producing any contra evidence. The reliance is merely based on the FIR which records P.W.2 who has also spoken on the same lines detailed in the F.I.R. When the documents which have been marked were prepared by Law Enforcing Agency which speaks totally in contradiction to the FIR recorded by P.W.2, in the absence of any evidence discrediting Exs.R3, R4 and R5 merely on the basis of FIR, which



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was marked at the earliest point of time cannot for the basis to fasten the liability on the offending vehicle. When Exs.R3 to R5 clearly fasten the liability on the deceased with regard to his rash and negligent driving and in the absence of any contra evidence, the evidence recorded by the Tribunal being on the basis of materials available before it, this Court has to necessarily endorse its acceptance to the said findings and accordingly negating the claim of compensation sought for by the claimants.

9. With the above observation this civil miscellaneous appeal is dismissed. No costs.

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Index : Yes / No
speaking Order : Yes / No
Neutral Citation Case : Yes / No
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To

1. Motor Accident Claims Tribunal, District Judge, Thiruvannamalai.
2. The Section Officer, V.R. Section, High Court, Madras.



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M.DHANDAPANI,J.,

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