



C.M.A.No.1475 of 2020

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 01.12.2023

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THE HON'BLE MR. JUSTICE M.DHANDAPANI

C.M.A. NO.1475 OF 2020

and

C.M.P. NO.10784 OF 2020

United India Insurance Company Ltd.,
Branch office at 5-B, 11,
State Bank of India Upstairs,
Salem Main Rasipuram Post and Taluk,
Namakkal District.

Appellants

- Vs -

1. Vasanthi
2. Arumugam
3. Kumar

.. Respondents

Civil Miscellaneous Appeal Petition filed under Section 173 of the Motor Vehicle Act 1988 against the award and decree dated 26.07.2019 made in MCOP. No.207 of 2016 on the file of the Motor Accidents Claims Tribunal (Sub Judge) Rasipuram.

For Appellant : Mr.D.Baskaran

For Respondents : Mr.K.A.Mariappan

JUDGMENT



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The present appeal has been filed by the appellant/insurance company, aggrieved by the compensation awarded to the claimants/respondents by the Motor Accident Claims Tribunal (Sub Judge), Rasipuram, vide fair and decreetal order dated 26.07.2019 made in MCOP. No.207 of 2016.

2. It is the case of the appellant that on 06.07.2015 at about 11.45 a.m., nearby Anjaneyar Temple, near Agaram Vellan Chettiyar Arch Opposite, while the deceased Prakash was working on the Metro water pipeline work, the driver of the crane, bearing Reg, No.TN 63 M 9293, suddenly moved the vehicle forward, in which, the said Prakash, who was travelling in the said crane holding a pipe, fell down and the crane ran over the hip and leg of Prakash, who sustained grievous injuries and inspite of treatment at the hospital, the said Prakash, breathed his last on the same day. Therefore, the claimants, viz., the respondents, who are dependents of the deceased filed a claim petition before the Tribunal claiming compensation in a sum of Rs.25,00,000/-.

3. Before the Tribunal, the claimants examined three witnesses as P.W.s 1 to 3 of which P.W.s 1 and 3 are the father and mother of the deceased and marked Exs.P-1 to 8. On the side of the respondents, R.W.s 1 to 3 were examined of which R.W.1 is the driver of the crane and Exs.R-1 and R-2 were marked and on the side of the witnesses, Exs.X-1 and X-2 were marked. The Tribunal, considering the oral and documentary evidence adduced by either side, held that the accident had occurred due to the rash and negligent driving by the



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driver of the crane and, accordingly, awarded compensation in a sum of Rs.15,82,000/- to the claimants. Challenging the said award, the present appeal has been filed by the insurance company.

4. Learned counsel for the appellant submitted that PW3, who is the father of the deceased, immediately after the accident, made a complaint before the concerned jurisdiction police stating that his son was travelling in the crane, by holding a pipe and at that time, the driver of the crane, driving the vehicle in a rash and negligent manner, resulted in the deceased falling down from the vehicle on the rear side and the wheel of the vehicle ran over the deceased in which the deceased sustained grievous injuries and succumbed to the same. However, it is the submission of the learned counsel that as per the complaint/Ex.P1, the deceased travelled in the crane by holding a pipe and accidentally fell down and lost his life. The said FIR, Ex.P-1 was proved in Court through PW2 and RW1. It is therefore the submission of the learned counsel that once the FIR is proved by the insurance company, necessarily the contents of the FIR also stands proved and, therefore, the fact that the FIR reveals that the deceased had travelled in the crane and fallen down the finding rendered by the Tribunal that the crane dashed against the deceased, is wholly misconceived and against the materials in the FIR.

5. It is the further submission of the learned counsel that the conditions of the policy stipulate that the driver alone is entitled to ride in the vehicle and the deceased having travelled in the crane as a gratuitous passenger, is not entitled



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to make any claim against the insurance company and therefore, the claimants are not entitled to claim any compensation.

6. Per contra, learned counsel appearing for the respondent/claimant submitted that admittedly, the deceased Prakash lost his life due to the accident at the instance of RW1. At the time of the accident, the deceased and PW2 Moorthy were working on laying pipeline for metro water and while executing the work, the deceased was holding the pipe from any movement along with other two persons, at which time, R.W.1 viz., the driver of the crane, drove the vehicle suddenly in a rash and negligent manner, resulting in the crane running over the deceased. It is therefore the submission of the learned counsel that the evidence of R.W.1 makes it clear that the deceased was not travelling in the vehicle and, therefore, rightly assessing the evidence, the Tribunal has given the compensation. It is the further submission of the learned counsel that PW3 is not an eye witness to the occurrence and though he is the father of the deceased, the mere fact that his version has been recorded in the FIR would not negative the evidence of P.W.2 and R.W.1, who are eye witnesses to the occurrence. The Tribunal, rightly taking into consideration the evidence of P.W.2 and R.W.1, has thought it fit to reject the FIR and had awarded compensation to the claimants, which is based on cogent and convincing reasons. Further there is no violation of policy conditions in the present case, as the R.W.1 has deposed that the deceased was not travelling in the vehicle and, therefore, the FIR cannot be the ground to discredit the evidence of P.W.2 and R.W.1. Accordingly, the learned counsel submits that all the facts have been properly considered and a



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finding has been recorded, which does not require any interference.

7. Heard the learned counsel on either side and perused the materials available on record.

8. Admittedly, Ex.P1 is the FIR, which was registered based on the complaint made by P.W.3, the father of the deceased. As per the FIR, the deceased was sitting on the crane and holding the pipe and he fell down and the crane ran over the deceased. However, PW3 is not an eye witness to the occurrence. It is not in dispute that the deceased was working along with P.W.2 and R.W.1 when the crane ran over the deceased.

9. In this regard, the evidence of P.W.2 and R.W.1 assumes significance. Both P.W.2 and R.W.1 have clearly deposed that the deceased was not travelling in the crane; rather, it is their evidence that he was holding the pipe from any movement at which time, the crane, driven by R.W.1, suddenly lost control and ran over the deceased resulting in his death. P.W.2, in sum and substance, had deposed on the same lines as R.W.1. From the above deposition of PW2 and RW1, it is evident that when the deceased and other co-workers were holding the pipe from any movement, at that time, suddenly, RW2/driver of the crane, had driven the crane in a rash and negligent manner without any signal and the crane run over the body of the deceased. During chief examination, RW1 admitted that the deceased and other employees was walking in front of the crane by holding a pipe at which time the deceased lost his balance and fell



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down resultantly the wheels of the crane ran over the body of the deceased. P.W.2 and R.W.1, as stated above, are eye witnesses to the occurrence.

10. In this backdrop, Ex.P-1 is pitted against the eye witness testimony of P.W.2 and R.W.1. It is to be pointed out that it has been the consistent view of the Courts that FIR is may not and need not contain all the details. It is settled law that FIR is not a conclusive proof 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. Merely because certain information is not mentioned or wrongly mentioned in the FIR cannot be a ground to doubt the statement of eye witnesses to the occurrence, when the said statements are found to be trustworthy. (*See Rohtash – Vs – State of Rajasthan (2006 (12) SCC 64 and Ranjit Singh & Ors. – Vs – State of Madhya Pradesh (JT 2010 (12) SC 167)*). The view expressed in the aforesaid decision has been reiterated by the Apex Court in *State of UP – Vs – Naresh & Ors. (2011 (4) SCC 324)*.

11. Keeping the ratio laid down by the Apex Court in mind, a perusal of the FIR as also the evidence of P.W.2 and R.W.1 reveal that P.W.2 and R.W.1 are eye witnesses to the occurrence and that their testimony is cogent and convincing and there is no contradiction in their evidence. Such being the case, merely because, the father of the deceased, viz., P.W.3, had, while giving the complaint, made a statement, that his son, viz., the deceased, was travelling in the crane and fell down and died, cannot be the basis to reject the testimony of



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P.W.2 and R.W.1, when their evidence is trustworthy and is convincing. Therefore, the discrepancies in the FIR, which has been recorded on the basis of the evidence of P.W.3, who is not an eye witness to the occurrence, cannot outweigh the evidence of P.W.2 and R.W.1, who are eye witnesses to the occurrence and whose evidence is trustworthy. Therefore, the contents of the FIR cannot form the basis for rejection of the claim of the claimants, whose claim survives on the basis of the evidence of P.W.2 and R.W.1.

12. Except for the above, the appellant has not questioned the award passed by the Tribunal on the question of quantum. Therefore, this Court need not venture into the quantum of compensation awarded by the Tribunal.

13. For the reasons aforesaid, finding no error in the order and decree passed by the Tribunal, in M.C.O.P.No.207 of 2016, this appeal is dismissed confirming the said order and decree. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs in this appeal.

14. The appellant is directed to deposit the entire amount as awarded by the Tribunal along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and costs as per the apportionment ordered by the Tribunal, less, the amount, if any already deposited, within a period of four (4) weeks from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal is directed transfer the share of the award amount, as apportioned by the Tribunal, to the bank account of the respective



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claimants, less the amount, if any already withdrawn, through RTGS within a period of two weeks thereafter.

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Rli/GLN

Index: Yes/No

To

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Motor Accident Claims Tribunal
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