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C.M.A.No.1357 of 2021

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.01.2023

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

AND

THE HONOURABLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

C.M.A.No.1357 of 2021

1. Lakshmi

2. Rajeswari

3. Dev Anandh

... Appellants

(appellants 2 and 3 are minors represented
by their Natural Guardian and mother
the 1st appellant)

Vs.

1. K.Uma Shankar

2. United India Insurance Company Limited,
Old address at No.266, D.O.C. Kapila Towersi Floor,
Mettupalayam Road, Coimbatore.

New address at

New No.134, Old No.40-42,

Greems Road, TP Claims Hub,

Silingi Buildings, Chennai-600 006.

... Respondents



C.M.A.No.1357 of 2021

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the decree and judgment dated 20th November, 2020 passed in M.C.O.P.No.3352 of 2012, by the Motor Accident Claims Tribunal, Special Sub-Court No.1, Small Causes Court, Chennai.

For Appellants : Mr.S.Ramajayam

For 1st respondent : Mr.J.Michael Visvasam

J U D G M E N T

(Judgment of the Court was pronounced by **R.SUBRAMANIAN, J.**)

The claimants, who sought compensation for the death of one Rajesh in a motor accident that occurred about 11.30 p.m. on 23.08.2011, are on appeal aggrieved by the dismissal of the claim petition on the ground that the accident occurred due to the rash and negligent driving of the deceased Rajesh.

2. The claimants, who are the wife and children of the deceased Rajesh, claimed that the accident took place at about 7.30 p.m. on 23.08.2011, while the deceased Rajesh was driving a Maruti Car bearing



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Registration No.TN 05 E 9822 on Salem National Highway near Puthumapattu, a Mahindra Van bearing Registration No. TN 22 X 4893 which was coming in the opposite direction dashed against the car. As a result of the said collusion, the deceased Rajesh and Raja who was a passenger sustained injuries. While Rajesh succumbed to the injuries, Raja was admitted in a hospital. Claiming that the deceased Rajesh was working as a Helper and Packer by profession and earning a sum of Rs.10,000/- p.m., the claimants sought for compensation of Rs.15,50,000/-.

3. The said claim was resisted by the Insurance Company contending that the accident did not occur in the manner suggested by the claimants. The Insurance Company claimed that as per the F.I.R. that was registered immediately after the accident, the accident had occurred at 11.30 p.m. on 23.08.2011, while the car which was driven by the deceased Rajesh was driven at high speed and dashed against the Mahindra Van which was coming in the opposite direction. The contents of the F.I.R., which was lodged by a stranger who was riding a Two Wheeler on the same road at the time of the accident, were projected as a defence to the claim. The fact that



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the final report was also filed against the said Rajesh was also pressed into service by the Insurance Company for repudiating its liability.

4. Before the Tribunal, the 1st claimant was examined as P.W.1 and the person who lodged the FIR, namely, one Murugan was examined as P.W.2. Ex.P.1 to Ex.P.6 were marked. The Administrative Officer of the 2nd respondent-Insurance Company was examined as R.W.1. Ex.R.1 to Ex.R.5 were marked.

5. The Tribunal, on consideration of the evidence, particularly, the contents of the F.I.R. and the Final Report and relying on the oral evidence of the person who lodged the FIR as P.W.2 concluded that the accident occurred due to the rash and negligent driving of the driver of the Maruti Car. The Tribunal took into account the Proof Affidavit of P.W.2 Murugan wherein he had stated that the car was coming behind him when the accident occurred. In the F.I.R., the same P.W.2 had stated that the car overtook him and went and hit the van which was coming in the opposite direction. These contradictions in the evidence of P.W.2 and the improbable



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version in the evidence of the Two Wheeler rider that he saw the accident that occurred behind him, led the Tribunal to conclude that the oral evidence of P.W.2 is unreliable. On the said conclusion, the Tribunal dismissed the claim petition.

6. We have heard Mr.S.Ramajayam, learned Counsel appearing for the appellants and Mr.J.Michael Visvasam, learned Counsel appearing for the 2nd respondent Insurance Company.

7. Mr.S.Ramajayam, learned Counsel for the appellants would vehemently contend that P.W.2 has stated that he only signed the F.I.R. and the contents were written by the police. Therefore, the contents of the F.I.R. ought not to have been believed by the Tribunal. No doubt, the F.I.R. is only an First Information Report. But some evidentiary value has to be attached to it. It is seen that P.W.2 Murugan had gone to the police station at about 2.00 a.m. on 24.08.2011 to lodge a complaint. It is not the case of any of the parties that there were some police personnel present at the time of the accident. The police were oblivious to the accident till the FIR was



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lodge. Therefore, it is not possible to accept the contention of the claimants that the FIR was prepared by the police according to their own whims and fancies. The eye-witness had gone to the police station at 2.00 p.m. in the morning on 24.08.2011 and has lodged the complaint. However, he had chosen to backtrack when he was examined before the Tribunal claiming that he only signed the FIR and he does not know the contents of the FIR.

8. We are unable to accept the said submission of the learned Counsel appearing for the appellants. Moreover, the version of P.W.2 in his Proof Affidavit as rightly contended by the Tribunal is most improbable. A Two Wheeler rider, that too, in the night cannot claim that he saw the accident that took place behind him. Therefore, the said version is fully unacceptable and improbable. Hence, we find that the Tribunal was right in rejecting the said version of P.W.2. We are, therefore unable to fault the Tribunal for having rejected the evidence of P.W.2 and concluded that the accident took place due to the rash and negligent driving of the rider of the Maruti Car, the deceased Rajesh and therefore, his legal heirs or dependants



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are not entitled to compensation under Section 166 of the Motor Vehicles

Act, 1988.

9. In the result, the Civil Miscellaneous Appeal fails and it is, accordingly dismissed. No costs.

(R.S.M.,J.) (S.S.K.,J.)
05.01.2023

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Internet :Yes
Index :No
Speaking order

To:
The Motor Accident Claims Tribunal,
Special Sub-Court No.1,
Small Causes Court, Chennai.



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