



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.08.2023

Coram:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

C.M.A. No.1273 of 2018

1. Kandipan

2. Minor. Venkatesan

3. Minor. Santhosh

Minor petitioners are rep. by their father and guardian

Kandipan, the first petitioner herein

... Appellants

Vs.

1. Sekar

2. IFFCO TOKIO General Insurance Co. Ltd.

IFFKO Bhavan, No.128, Habibullah Road

4th Floor, T.Nagar

Chennai - 17

... Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the order dated 01.12.2016 made in M.A.C.T.O.P.No.4015 of 2013 on the file of the Chief Judge, Motor Accident Claims Tribunal, Chennai.

For Appellants : M/s.A.Subadra

For Respondents : R1-Notice Served, No Appearance
Mrs.K.Saraswathi for R2



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JUDGMENT

This Civil Miscellaneous Appeal is filed to set aside the order dated 01.12.2016 made in M.A.C.T.O.P.No.4015 of 2013 on the file of the Chief Judge, Motor Accident Claims Tribunal, Chennai.

2.The 1st appellant is the husband and the 2nd and 3rd appellants are the sons of the deceased. The 1st respondent is the owner and the 2nd respondent is the Insurer of the offending vehicle.

3. The case of the claimants is that on 26.01.2013 at about 7 p.m., the deceased was travelling as a pillion rider in the two wheeler bearing Regn.No.TN-21-AL-1823 with one Sekar and the said Sekar was driving the two wheeler in a rash and negligent manner. While the said Sekar was trying to cross the road at Sirunai, an unregistered motor cycle which was suddenly coming in the opposite direction, hit his two wheeler due to which, the deceased fell down and sustained grievous injuries. Subsequently, she was admitted in the hospital and later, she died on 31.01.2023.



4. The husband of the deceased, along with his minor sons, had filed a claim petition in M.C.O.P.No.4015 of 2013 on the file of the Motor Accident Claims Tribunal (Small Causes Court) Chennai, stating that the deceased was one of the earning members of the family and after her demise, the appellants, who are the husband and sons of the deceased, were struggling for survival. Since the accident had occurred solely due to the rash and negligent driving of the said Sekar, the 1st respondent herein, the appellants filed the claim petition against the said Sekar and the Insurer of the 1st respondent's vehicle, claiming compensation of Rs.27,00,000/- restricted to Rs.20,00,000/- for the death of the deceased.

5. Initially, the Tribunal, passed an ex-parte award. Subsequently, after hearing the learned counsel for the claimants and the learned counsel for the Insurance Company, the Tribunal dismissed the claim petition by order dated 01.12.2016. Before the Tribunal, the 1st respondent herein was set ex-parte.

6. Challenging the said order of dismissal, the claimants have filed the present appeal.



7. Before the Tribunal, in order to substantiate the claim, on the side of the claimants, 2 witnesses were examined as P.W.1 and P.W.2 and 11 documents were marked as Ex.P.1 to Ex.P.11. On the side of the respondents, one witness was examined as R.W.1 and 2 documents were marked as Ex.R1 and R2.

8. The learned counsel for the appellants/claimants submitted that the accident happened due to head on collision of 2 two wheelers. One is bearing Regn.No.TN-21-AL-1823 rode by the 1st respondent herein and the other vehicle is an unregistered two wheeler, rode by an unknown person. But the accident had occurred only due to the rash and negligent riding of the 1st respondent. Though the 1st respondent himself gave the complaint before the police against the rider of the unknown vehicle, since the said unknown person was not able to trace, the case was closed as undetected. Whereas, the rough sketch filed on the side of the 2nd respondent/Insurance Company clearly shows that 2 two wheelers were involved in the accident and due to the rash and negligent riding of the 1st respondent only the accident had happened and therefore, the 1st respondent is responsible. Since the 2nd respondent is the insurer of the vehicle of the 1st respondent, the 2nd



respondent is also responsible for indemnifying the loss caused to the family of the deceased. Even in the Accident Register, it is clearly stated that 2 two wheelers were involved in the accident and it is head on collision. Therefore, the Tribunal ought to have fixed 50% contributory negligence on the part of the 1st respondent and ought to have awarded 50% of compensation and the 2nd respondent being the insurer of the 1st respondent's vehicle, they are liable to pay the compensation to the claimants. Further, P.W.2 who is the eyewitness to the accident, has clearly stated about the manner of the accident and as per his evidence, the accident had happened only due to the rash and negligent riding of the 1st respondent and therefore, the Tribunal ought to have awarded compensation. Though initially ex-parte award was passed by the Tribunal, subsequently, after enquiry and validating the oral and documentary evidence, the Tribunal dismissed the claim petition as not maintainable. The Tribunal failed to consider the rough sketch filed by R.W.1 and also the evidence of P.W.2/eye witness and erroneously held that the accident happened only due to rash and negligent riding of the rider of the unknown vehicle and not by the 1st respondent, which warrants interference.



9. The learned counsel for the 2nd respondent/Insurance Company submitted that the deceased was a pillion rider of the two wheeler which was ridden by the 1st respondent and that the 1st respondent is the one who gave the complaint before the police against an unknown rider of an unregistered two wheeler. Subsequently, the case was closed as undetected since the police could not trace out the alleged unknown person as well as the unregistered vehicle. Therefore, the Tribunal rightly held that the accident had occurred only due to the rash and negligent riding of the rider of the unknown two wheeler. Therefore, the 1st respondent is not responsible for the accident and hence, the 2nd respondent is not liable to pay any compensation. Therefore, the Tribunal exonerated the liability and dismissed the petition as not maintainable since it was a case of hit and run.

10. Heard both sides and perused the materials available on record.

11. The accident is not in dispute. The fact that the death of the deceased is due to the accident is also not disputed. The only dispute is on whose negligence, the accident had happened.



12. The 1st respondent is the rider of the motor cycle bearing Regn.No.TN-21-AL-1823 in which, the deceased had travelled as a pillion rider. The accident is said to have happened due to head on collision of the said two wheeler with another unknown unregistered two wheeler. The FIR is also registered only against the rider of the unknown unregistered two wheeler. The police has not filed any complaint against the 1st respondent or even at the time of admitting the deceased in the hospital and making entry in the Accident Register, nothing has been stated before the doctor that the accident was only due to rash and negligent driving of the 1st respondent and no complaint was given against the 1st respondent, to the police. Even when the case registered against the unknown rider was closed for the reason that the unknown rider as well as the unregistered vehicle were not traced, the appellants have not given any complaint against the 1st respondent.

13. Though the learned counsel for the appellants/claimants vehemently contended and relied on the rough sketch filed through R.W.1, who is the official of the 2nd respondent/Insurance Company, it is not an admissible evidence and that R.W.1 is not an eyewitness to this occurrence. Though the learned counsel solely relied on the evidence of P.W.2, who is



alleged to be the sole eyewitness to the occurrence, except the proof affidavit filed by P.W.2, there is no material to prove that he was present nearby a tea shop in the occurrence place and there is no material to corroborate the presence of P.W.2 in the occurrence place at the time of accident. Further, prior to filing of the claim petition, nowhere his name was mentioned to show that he was present at the time of accident. Therefore, in the absence of any material and in view of the fact that the FIR was registered against the rider of the unknown vehicle on the basis of the complaint given by the 1st respondent, it is to be accepted that the the accident had occurred only due to the rash and negligent riding of the unknown vehicle, unless it is contrarily proved.

14. Though the learned counsel for the appellants/claimants attempted to submit that the accident was due to the rash and negligent driving of the riders of both the two wheelers, due to which, there was head on collision, the claimants ought to have called for the Motor Vehicle Inspector's report to prove that the two wheeler of the 1st respondent was damaged due to head on collision nor summoned the Motor Vehicle Inspector and examined him. Therefore, in the absence of any material to prove the claim that the accident



had happened due to the rash and negligent riding of the 1st respondent, the Tribunal on finding that it is a case of hit and run and the accident had occurred only due to the rash and negligent riding of the unknown rider, dismissed the claim petition as not maintainable.

15. No doubt, the appellate Court, as a final Court of fact finding, can re-appreciate the entire evidence and can give independent findings and need not simply endorse the views of the Tribunal. When this Court, as an appellate Court, while re-appreciating the entire materials independently, does not find any evidence or material to reverse the findings of the Tribunal . This Court also does not find any material to show that the accident was only due to the rash and negligent riding of the 1st respondent for which, the 2nd respondent is liable to pay the compensation. In the absence of the same and also in the absence of proof that P.W.2 is the eyewitness to the accident, this Court does not find any reason to fix the negligence against the 1st respondent. Therefore there is no merit in the appeal and the same is liable to be dismissed.



16. Accordingly, this Civil Miscellaneous Appeal is dismissed.

Consequently, connected Miscellaneous Petition is closed. No Costs.

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Index : Yes / No

Speaking Order : Yes / No

Neutral Citation Case : Yes/No



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To

- 1.The Chief Judge,
Motor Accident Claims Tribunal, Chennai.
- 2.The Section Officer,
VR Section,
High Court,
Madras.

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P.VELMURUGAN, J

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