



C.M.A.No.2960 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED: 30.08.2023

CORAM:

THE HONOURABLE MR.JUSTICE K.RAJASEKAR

C.M.A.No.2960 of 2019

1.Jothi
2.Minor Vignesh
3.Karuppannan
4.Ponnammal
(Minor petitioner is represented
by his mother guardian M/s.Jothi,
1st petitioner herein)

... Appellants

Vs.

1.S.Santha Kumar

2.United India Insurance Co.Ltd.,
No.19/2A, Junction Main Road,
Opp. To Raja Kalyana Mahal,
5 Roads, Salem – 636 604.
Respondents

...

Prayer: Civil Miscellaneous Appeal filed under 173 of Motor Vehciles Act to set aside the decree and judgement dated 12.08.2010 made in MCOP.No.265 of 2006, on the file of the Motor Accident Claims Tribunal, Principal District Judge, Namakkal.



C.M.A.No.2960 of 2019

For Appellants : Mr.S.Sankar
for Mr.C.Thangaraju

For respondents : No Appearance

JUDGMENT

This Civil Miscellaneous Appeal is filed challenging the award passed in MCOP.No. 265 of 2006 on the file of the Motor Accident Claims Tribunal, Principal District Judge, Namakkal whereby the Tribunal has dismissed the claim petition.

2. The parties are referred to hereunder according to the status and ranking before the Tribunal.

3. On 01.11.2005, at about 19.30 hours, the deceased namely Ettikan was riding a two wheeler bearing Reg.No.TN 28 L 0085 from Namakkal to Thuraiyur main road near Pon Murugan Chamber, Pottireddipatty, at that time unidentified lorry suddenly hit on the motorcycle resulting in the accident, due to which the deceased sustained grievous injuries all over his body and died in the hospital. The claimants, who are the wife, minor son



C.M.A.No.2960 of 2019

and parents of the deceased have filed claim petition seeking compensation for a sum of Rs.7,00,000/- under Section 166 of Motor Vehicles Act against the owner and insurer of two wheeler in which deceased travelled at the time of accident.

4. Before the Tribunal, the first respondent who is the owner of the two wheeler in which deceased travelled remained ex parte and has not contested the case.

5. The second respondent who is the insurer of the two wheeler, contested the claim that the accident was caused due to the negligence on the part of the deceased himself while he was driving the motorcycle. In this regard, a criminal case was also registered against deceased and case was closed on the ground that charge abated. There was no third party vehicle involved in this case and it is not a case of hit and run and hence prays to dismiss the claim petition.

6. Before the Tribunal on the side of the claimants, PW1 to PW3 were examined and Exs.P1 to P7 were marked and on the side of respondents,



RW1 was examined and Ex.R1 was marked.

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7. Based on the evidence placed on record, the Tribunal has held that there is no involvement of third party vehicle and the deceased himself is responsible for the accident and dismissed the claim petition. Aggrieved over the dismissal of the claim petition, the claimants have filed this Civil Miscellaneous Appeal and prays to set aside the finding of the Tribunal and also prayed for granting of compensation.

8. Before the Tribunal, the third claimant father of the deceased was examined as PW1 and he has deposed that while his son was riding the two wheeler on 01.11.2005 at about 19.30 p.m., on Namakkal to Thuraiyur main road near Pon Murugan Chamber, Pottireddipatty, an unknown lorry hit on the motorcycle which resulted in accident causing sever injuries all over his body and succumbed to death and was not an eyewitness to the occurrence. P.W.2 was examined as eyewitness and he has deposed that the unknown lorry hit on the two wheeler which resulted in causing injuries to the deceased. In the cross examination, he has also reiterated that unknown lorry hit on the two wheeler driver by the deceased. To controvert this



C.M.A.No.2960 of 2019

evidence, the respondents have examined RW1 the official of the insurance company and Ex.R1 the final report was marked wherein in it is mentioned that there is no involvement of any lorry in the occurrence and due to negligent driving of two wheeler in high speed, the deceased lost the control and thrown into a pit in the nearby place causing severe injuries all over his body and died on spot. Admittedly, the owner or insurer of the lorry are not a party in this claim petition. According to claimants, the driver of unknown lorry is tortfeasor. In Ex.R1, the final report filed by the Inspector of Police, Senthamangalam and FIR which is marked as Ex.P1, shows that deceased was found dead near the place of occurrence after sustaining grievous injuries and in the investigation it revealed that the deceased himself fell down from the two wheeler due to high speed. Even if the case of the claimants is accepted that the unknown lorry has hit the two wheeler of the deceased, they are not entitled to get the compensation either from the owner or from the insurance company. They can only seek for compensation under hit and run cases. Since the deceased himself steps into the shoes of the owner of the vehicle, he is not entitled to claim compensation from the owner of two wheeler as followed by the decision of the Hon'ble Apex Court in ***Ramkhiladi & Another vs. the United India Insurance Company*** reported



C.M.A.No.2960 of 2019

in 2020 ACJ 627. On a perusal of the policy of the two wheeler, in schedule of payment, only third party premium has been paid, hence only the third party alone entitle to claim compensation. In view of the discussion made above, this Court is of the view that Tribunal has rightly dismissed the claim petition and there is no reason to interfere with the finding of the Tribunal.

9. Accordingly, this Civil Miscellaneous Appeal is dismissed and the award of the Tribunal is confirmed. No costs.

30.08.2023

jai

Index: Yes/No

Speaking Order: Yes/No

Neutral Citation Case: Yes/No

To:

1. The Principal District Judge,
Motor Accident Claims Tribunal,
Namakkal.
2. The Section Officer,
V.R. Section,
High Court, Chennai.



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C.M.A.No.2960 of 2019

K.RAJASEKAR,J.

jai

C.M.A.No.2960 of 2019

30.08.2023