



C.M.A.No.1792 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :12.09.2023

CORAM

THE HON'BLE MR. JUSTICE P.VELMURUGAN

C.M.A.No.1792 of 2018

1. Palaniammal

2. Minor Radhika

3. Minor Koushika

4. Minor Soundharya

[2 to 4 represented by their
natural guardian and mother
the first appellant]

5. Ponnammal

6. Dharmalingam

... Appellants

Vs.

1. Sri Balaji Enterprises,
Palaniandi Nagar Main Road,
Dalmiapuram,
Lalgudi Taluk,
Trichy District.



C.M.A.No.1792 of 2018

2. The Branch Manager,
National Insurance Company Limited,
Gerome Building,
Port Station Road,
Trichy.

... Respondents

PRAYER:

Civil Miscellaneous Appeal filed under Section 173 of M.V.Act 1988, against the judgment and decree passed by the Motor Accident Claims Tribunal, Ariyalur (Sub Court, Ariyalur) in M.C.O.P.No.350 of 2005 dated 03.03.2018.

For Appellant : Mr.P.Paramasiva Doss

For R1 : Notice dispensed with

For R2 : Mr.S.Arun Kumar

JUDGEMENT

This Miscellaneous Appeal has been filed against the Award and Decree dated 03.03.2018 passed in M.C.O.P.No.350 of 2005 on the file of the Motor Accident Claims Tribunal, Ariyalur (Sub Court, Ariyalur).

2. The appellants who are the claimants, have filed the claim



C.M.A.No.1792 of 2018

petition in M.C.O.P.No.350 of 2005 on the file of the Motor Accident Claims Tribunal, Ariyalur under Sections 140 and 166 of Motor Vehicles Act and said the claim petition was dismissed by the Tribunal on the ground that the appellants have not substantiated their claim that the death of the deceased was due to the accidental injury only. Challenging the same, the claimants have filed the present Civil Miscellaneous Appeal. First appellant is the wife of the deceased. Appellants 2 to 4 are the daughters of the deceased. The Appellants 5 and 6 are the father and mother of the deceased.

3. Brief facts of the case are that, on 03.10.2003, while the deceased Rajendran was travelling in a lorry bearing Registration No. TN 45 A 3255 from Keelapalur to Kallakudi, with the permission of the driver of the lorry, the said Rajendran died in the lorry due to fall of lime stone on him and due to careless and negligence driving on the part of the driver.

4. Learned counsel for the appellants/claimants submitted that



C.M.A.No.1792 of 2018

WEB COPY

while the deceased was travelling in the lorry, which belonged to the first respondent, due to rash and negligent driving of the driver of the lorry bearing Registration No. TN 45 A 3255, the deceased sustained injuries due to fall of limestone on him and later, he succumbed to death. Hence the claimants have filed the claim petition. Further, P.W.2 has admitted that the deceased was travelling in the lorry. From the evidence of the respondents, it is clear that they found the dead body in the lorry while unloading the lime stone. Post mortem report also shows that the deceased sustained injury. The vehicle was insured with the second respondent/Insurance Company. The Tribunal failed to consider the abovesaid facts and dismissed the petition, which warrants interference.

5. Learned counsel for the second respondent/Insurance Company submitted that, no material is available to show that the deceased died due to accident. The case was registered under Section 174 Cr.P.C., The accident took place in the year 2003. Though the claim petition was filed in the year 2005 itself, the counter was filed in the year 2007 only. Till that date, the case was not altered into, for the offences under



C.M.A.No.1792 of 2018

WEB COPY

Sections 279 or 304(A) IPC. The case remained at the same stage ie., under Section 174 Cr.P.C., Though the Ex.P5- inquest report was filed, no other materials are available to show that there was an accident and due to the accident, the deceased sustained injury and later he succumbed to death. In the Ex-P5-post mortem report also, the Doctor has not stated any reason for the death of the deceased. Though the post mortem report was marked, it was not a final opinion. Therefore, in the absence of materials to show that the deceased sustained injury due to accident, unless other than the accident, whatever be the manner of accident, ie., the deceased sustained injury due to that accident and he died, the Motor Vehicles Act would not get attracted. The Motor Vehicles Act will attract only when the deceased sustained injuries due to accident. The Tribunal rightly dismissed the application and there is no merit in the appeal and the same may be dismissed.

6. Heard and perused the materials available on record.

7. Admittedly, the deceased died on 03.10.2003. The case was



C.M.A.No.1792 of 2018

registered under Section 174 Cr.P.C., P.Ws.1 and 2 have not specifically stated that they have seen the accident and the deceased sustained injuries only due to the accident. In the Post mortem report-Ex.P5, it is not mentioned about the death of the deceased was only due to accidental injury. Therefore, there is no material to show that there was an accident and due to the accident, the deceased sustained injury and he succumbed to injury. Evidence of P.Ws.1 and 2 would not help the appellants/claimants. The appellants have neither filed the complaint before the superior authority to speed up the investigation nor they have taken steps to alter the complaint from Section 174 Cr.P.C., to the offence under section 304(A) IPC. In the claim petition, appellants/claimants have to establish the foundational fact that there is an accident and due to the accident, the deceased sustained injuries and hence the deceased succumbed to injury. There are no materials to show that the deceased died due to accidental injury. The claimants have not established the accident, as also the case having been registered under Section 174 Cr.P.C., Therefore, in the absence of the same, the Tribunal has found that the death of the deceased caused not due to accidental



8. This Court, as appellate court, though it can always re-appreciate the evidence independently and give independent findings, need not simply endorse the view of the Tribunal. But this appellate Court, as a final court of fact finding, has re-appreciated the materials. While re-appreciating the materials, this Court does not find any reason for taking the other view of the Tribunal. There are no materials to give a finding that the deceased died only due to the accident. Therefore, under these circumstances, this Court does not find any perversity or illegality or infirmity in appreciation of evidence by the Tribunal and there is no merit in the appeal and the same is liable to be dismissed. Accordingly, the Civil Miscellaneous Appeal is dismissed. There shall be no order as to costs.

12.09.2023

mfa

Index: Yes/No

Speaking Order: Yes/No

Neutral Citation: Yes/No



WEB COPY



C.M.A.No.1792 of 2018

To

1. The Motor Accident Claims Tribunal,
Sub Court,
Ariyalur.
2. The Section Officer,
VR Section,
High Court,
Madras.



WEB COPY



C.M.A.No.1792 of 2018

P.VELMURUGAN, J.

mfa

C.M.A.No.1792 of 2018

12.09.2023