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C.M.A.No.3755 of 2019

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.02.2023

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

AND

THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI

C.M.A.No.3755 of 2019

and

C.M.P.No.3996 of 2023

1.Peter Raj Kapoor

2.Sanjana Maria Kappor.P

...Appellants

Vs.

1.D.Baskar

2.S.Mahesh Kumar

3.Shriram General Insurance Company Ltd.,
10003-E,8, RIICO Industrial Area,
SitaPura, Jaipur, Rajasthan – 302 022.

...Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 to set aside the judgment and decree dated 01.10.2018 passed in M.C.O.P.No.4577 of 2015 on the file of learned II Judge, Court of Small Causes, Chennai.

For Appellants : Mr.S.Packiaraj

For Respondents : Mr.K.Velu for R1 and R2

R3 – No appearance



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J U D G M E N T

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

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Heard Mr.S.Packiaraj, learned counsel for the appellant and Mr.K.Velu, learned counsel for the respondents 1 and 2. The 3rd respondent though served is not appearing either in person or through counsel.

2. The appellants are aggrieved by the dismissal of the claim petition in entirety on the ground that the appellants who are claimants have not proved the negligence on the part of the offending vehicle viz., the Eicher lorry bearing Reg.No.TN-73-9686.

3. Mr.S.Packiaraj, learned counsel appearing for the appellants has taken us through the award of the Tribunal. We find that the Tribunal had gone on unnecessary assumption considering the status of the victim, who is happened to be a senior IAS officer of the Government of Tamil Nadu. We are not persuaded to accept the finding based on the status of the victim in an accident claim case.



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4. The appellant has also filed an application in C.M.P.No.3996 of 2023 seeking to produce additional documents viz., Post-mortem certificate of the deceased as well as the inspection reports of both the vehicles. A perusal of the contents of the inspection reports of both the motor vehicles *prima facie* shows that some negligence could be attributed to the driver of the lorry also.

5. Since the material that is now sought to be placed before us was not available before the Tribunal and the 3rd respondent Insurance Company is also not appearing, we feel that it is a fit case where the matter has to be remitted to the Tribunal and the Tribunal will decide the issue afresh after looking into the documents that are now sought to be produced before us.

6. In view of the above, this civil miscellaneous appeal is **allowed** and the award of the Tribunal is set aside. The MCOP.No.4577 of 2015 is remitted to the claims Tribunal for fresh consideration. CMP.No.3996 of



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2023 is also **allowed**. The documents produced along with it are received as additional evidence and marked as Exs.P10 to P12. The Tribunal will take into account these documents also while deciding on the issue of negligence.

7. It is stated that the claim arising out of the death of the driver of the vehicle is pending in MCOP.No.4021 of 2015 before the II Special Court for Motor Accident cases, Chennai. We are of the opinion that this case should also be tried along with the said OP which is already pending, since both of them arise out of the same accident.

8. Therefore, MCOP.No.4577 of 2015 will stand transferred to II Special Court for Motor Accident Cases, Chennai to be tried along with MCOP.No.4021 of 2015. Since we have remitted the matter, the Court fee paid in this appeal is directed to be refunded to the learned counsel for the appellants. No costs.

(R.S.M.,J.) (K.G.T.,J.)
24.02.2023

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Exhibits marked on the side of the Appellants:-

Ex.P10 : Postmortem Certificate of Dr.Shanthini Kapoor dated 14.01.2015

Ex.P11 : Inspection report of Motor Vehicle bearing
Reg.No.TN-07-BQ-8178 dated 15.01.2015.

Ex.P12 : Inspection report of Motor Vehicle bearing
Reg.No.TN-73-9686 dated 15.01.2015.

(R.S.M.,J.) (K.G.T.,J.)
24.02.2023

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Index :No
Internet :Yes
Neutral citation :No
Speaking order

To:-

The II Judge,
Court of Small Causes,
Chennai.



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R.SUBRAMANIAN, J.
and
K.GOVINDARAJAN THILAKAVADI, J.

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