



C.M.A.No.2820 of 2021

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.01.2023

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

AND

THE HONOURABLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

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1.Y.Dhanalakshmi

2.Y.Bharath Kumar (Minor)

3.Y.Roshini (Minor)

[Minor petitioners represented by their mother
and next friend Y.Dhanalakshmi]

...Appellants

Vs.

1.Anantharaman

2.Royal Sundaram Allianz Insurance Co., Ltd.,
Subramaniyam Buildings,
No.1, Club House Road, Anna Salai,
Chennai – 2.

...Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the decree and judgment dated 29.08.2019 made in M.C.O.P.No.5081 of 2015 on the file of Motor Accident Claims Tribunal, (Chief Judge, Court of Small Causes), Chennai.



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For Appellants : Mr.Varadha Kamaraj

For Respondents : Mr.V.Seshachari for R2

R1 – Notice dispensed with

J U D G M E N T

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

This appeal is at the instance of the claimants challenging the dismissal of M.C.O.P.No.5081 of 2015 on the ground that the claimants have not proved the accident.

2. The claimants sought for compensation of Rs.50,00,000/- for the death of one Yuvaraj in a road accident alleged to have occurred between 2.30 and 4.00 a.m on 02.12.2014 at Thatha Muthiyappan Street. According to the claimants, while the deceased, who was working as a load man was walking along the road, a lorry bearing Reg.No.TN-21-AB-6777 owned by the 1st respondent, insured with the 2nd respondent driven in a rash and negligent manner by its driver, dashed against the deceased. As a result of which the deceased sustained grievous injuries and died on the spot. Claiming that the deceased was a barber and was earning a sum of



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Rs.20,000/- per month, the claimants sought for compensation of

Rs.50,00,000/- as aforesaid.

3. The claim was resisted by the Insurance Company contending that the accident never took place. The vehicle viz., lorry bearing Reg.No.TN-21-AB-6777 was not at all involved in the accident. Citing the FIR that was filed against the unknown vehicle, the Insurance Company contended that the vehicle has been introduced in the case, falsely, only to obtain compensation.

4. Before the Tribunal the 1st claimant was examined as PW1 and one Hariraman was examined as PW2. The driver of the lorry Muralidharan was examined as RW1. Exs.P1 to P8 were marked on the side of the claimants and the driving license of the driver was marked as Ex.R1.

5. The Tribunal upon appreciation of evidence, concluded that the evidence of PW2 is not reliable. It also took note of the fact that the post-mortem report has not been placed before the Court. The Tribunal therefore



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concluded that the accident had not occurred in the manner suggested by the claimants and the involvement of the vehicle viz., lorry bearing Reg.No.TN-21-AB-6777 was not established. On the said finding the Tribunal dismissed the claim. Hence, this appeal.

6. We have heard Mr.Varadha Kamaraj, learned counsel appearing for the appellants and Mr.V.Seshachari, learned counsel appearing for the respondent / Insurance Company. Notice to the 1st respondent is dispensed with, inasmuch as he remained exparte before the Tribunal.

7. Mr.Varadha Kamaraj, learned counsel appearing for the appellants would vehemently contend that the Tribunal ought not to have dismissed the claim petition. He would submit that the fact that the charge sheet has been filed against the driver of the offending vehicle and evidence of PW2 would provide sufficient proof for involvement of the lorry.

8. Mr.V.Seshachari, learned counsel appearing for the Insurance Company would submit that the Tribunal has dis-believed the evidence of



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PW2 noting the contradictions in his evidence. The contents of the charge sheet as well as the FIR is sought to be relied upon by the counsel for the Insurance Company.

9. The only evidence that is available to prove the accident is the evidence of PW2, as the charge sheet cannot be made the basis, since the criminal case has ended in honourable acquittal. The evidence of PW2, as rightly pointed out by the Tribunal and the learned counsel for the Insurance Company, is very shaky. In his proof affidavit, PW2 has stated that while he was riding his cycle the lorry that came from behind had hit the deceased person who was walking along the road. However, in his cross examination it is stated that the lorry came in opposite direction. It is a very vital contradiction which cannot be ignored.

10. We also find that the criminal Court had acquitted the driver of the vehicle on the ground of non-involvement of the vehicle. In the above circumstances, we are unable to fault the Tribunal for having come to the conclusion that the accident has not been proved. The minimum



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requirement for a claimant to succeed in a motor accident claims case is to prove the accident. In the absence of any reliable evidence to prove the accident, we do not think that the Tribunal was in error in dismissing the claim petition. We see no reason to interfere with the judgment of the Tribunal.

11. The appeal therefore fails and it is accordingly **dismissed**. No costs.

(R.S.M.,J.) (S.S.K.,J.)
27.01.2023

dsa
Index :No
Internet :Yes
Speaking order

To:-

The Chief Judge,
Motor Accident Claims Tribunal,
Court of Small Causes, Chennai.



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