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C.M.A.No.1904 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.09.2023

CORAM :

THE HONOURABLE **MR.JUSTICE SUNDER MOHAN**

C.M.A.No.1904 of 2023

1.G.Palani

2.P.Kalaiselvi

...Appellants/Petitioners

Vs.

The Managing Director,
Metropolitan Transport corporation Ltd.,
(Division – I), Pallavan House,
Anna Salai, Chennai – 600 002.

...Respondent

Prayer: This Civil Miscellaneous Appeal has been filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and Decree dated 26.04.2023 made in M.C.O.P.No. 1371 of 2018 on the file of the IV Judge, Motor Accidents Claims Tribunal, (Court of Small Causes), Chennai.



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For Appellants : M/s.P.T.Saleem Fathima

For Respondent : M/s.N.Murali Vinoth

J U D G M E N T

The instant appeal has been filed by the claimants, seeking to set aside the dismissal of the claim petition filed by them before the Tribunal.

2. The appellants had filed the claim petition stating that on 20.09.2017, at about 2 p.m. while the deceased was riding his motor cycle bearing Reg.No.TN-12-M-7328, from the west to the east direction on the extreme left side of MTH Road, a bus bearing Reg.No.TN-01-N-9164 belonging to the respondent/Metropolitan Transport Corporation proceeded on his right side just behind him. On seeing another motor cycle bearing Reg.No.TN-320-BQ-6697 coming in the opposite direction, the bus took a sharp left turn and dashed against the motor cycle of the deceased, as a result of which the deceased fell down and was run over by the left front wheel of the bus.



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3. The respondent/Metropolitan Transport Corporation, filed a counter denying the manner in which the accident took place and prayed for dismissal of the claim petition.

4. Before the Tribunal, the appellants examined P.W.1 and P.W.2 and marked fifteen documents as Exs.P1 to P15. The respondent examined its driver as R.W.1 and marked two documents as Exs.R1 and R2.

5. The Tribunal, after considering the oral and documentary evidence, disbelieved the evidence of P.W.2/eye-witness examined on the side of the appellants and dismissed the claim petition, stating that the deceased was the tortfeasor, relying upon the evidence of R.W.1/Driver of the Metropolitan Transport Corporation, Ex.P1/FIR, and Ex.R1/Rough sketch prepared by the respondent.

6. The learned counsel for the appellants submitted that R.W.1 is an interested witness; that Ex.P.1 is not substantive evidence and could not be the basis to reject the claim petition. She further submitted that



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Ex.R.1/Rough Sketch was prepared by the respondent's investigator, which hardly has any evidential value.

7. The learned counsel for the respondent per contra submitted that the award of the Tribunal is just and reasonable, and hence there is no interference is called for and prayed for dismissal of the appeal.

8. Heard the learned counsel for the appellants as well as the learned counsel for the respondent and perused the materials available on record.

9. On perusal of the records, it is seen that P.W.2 was examined on the side of the appellants to prove the accident. The Tribunal, based on his statement in the cross-examination that he heard the sound and went to the accident spot had observed that he could not have been the eyewitness to the accident. The Tribunal had accepted the oral evidence of R.W.1, Ex.P1 and Ex.R1 to dismiss the claim petition. This Court is of the view that FIR/Ex.P1



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is not substantive evidence and cannot be the basis for dismissing the claim petition. Further, Ex.R.1 is the Rough Sketch prepared by the investigator of the respondent. It has no value, and it cannot be the basis for disbelieving the version of the appellants. R.W.1 is an interested witness and it is his version as against the version of P.W.2. The Tribunal ought to have seen that a fact can be established before the Tribunal by preponderance of probability. The appellants are not expected to prove the accident beyond a reasonable doubt. Therefore, this Court is of the view that the impugned order passed by the Tribunal is liable to be set aside and the Tribunal may be directed to consider the matter afresh with regard to negligence as well as quantum of compensation and also ascertain if there is any composite negligence on the part of the deceased as well as R.W.1.

10. Accordingly, the Civil Miscellaneous Appeal is allowed setting aside the award passed by the Tribunal in M.C.O.P.No.1371 of 2018 on 26.04.2023 and the matter is remitted back to the Tribunal for fresh disposal to decide whether the respondent is responsible for the accident and to arrive



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at quantum of compensation payable by the respondent if there is any negligence. Both the parties shall be afforded opportunities to put forth their contentions with reference to oral and documentary evidence. The learned IV Judge, Motor Accident Claims Tribunal, Small Causes Court, Chennai, is directed to expedite the process and complete the trial, as expeditiously as possible, in any event, within a period of six months from the date of receipt of a copy of this order. No costs.

27.09.2023

dk

Speaking Order / Non-Speaking Order
Neutral Citation: Yes / No

Copy to:-

- 1.The IV Judge,
Motor Accidents Claims Tribunal,
Court of Small Causes, Chennai.
2. The Section Officer,
VR Section,
High Court,
Madras.



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SUNDER MOHAN, J.

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