



C.M.A No.351 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.11.2023

CORAM

MR.JUSTICE N.SESHASAYEE

C.M.A.No.351 of 2022
and C.M.P.No.2418 of 2022

Cholamandalam MS General
Insurance Co. Ltd.,
Branch Office,
No.9, 1st Floor, Rajaji Road,
Peramanur, Maravaneri,
Salem Taluk & District.

... Appellant

Vs.

1.Kandasamy

2.Sudha

3.Tamilarasi

4.Lakshmi

5.Palani

6.Mani

7.Karthikeyan

8.Kuppammal

9.Murugan

... Respondents



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Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the award dated 17.02.2021 in M.C.O.P.No.370 of 2019 on the file of the Motor Accident Claims Tribunal (Special District Judge) at Dharmapuri.

For Appellant : Mr.R.Sree Vidhya

For Respondents : Mr.D.Ramesh Kumar
for R1 to R8

JUDGMENT

This appeal is preferred by the insurance company, the second respondent in MCOP.No.370 of 2019 on the file of MACT (Special District Judge) Dharmapuri, which involves an accident of an auto-rickshaw bearing No.TN29 BC 7884, dashing and killing a pedestrian. Seeking compensation, the dependents of the victim moved the Tribunal in the aforesaid MCOP, and the Tribunal had passed an award granting Rs.7,86,800/- as compensation, and made both the owner and the insurance company of the auto-rickshaw jointly and severally liable. This is now under challenge.

2.Heard Ms.R.Sree Vidhya, the learned counsel for the appellant. The learned counsel submitted that there is no involvement of the alleged



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offending auto-rickshaw in the accident and this is bone out by Ex.P1,

F.I.R. The F.I.R. was registered at the instance of the husband of the victim (the 1st claimant before the Tribunal), wherein it is alleged that the alleged victim of the accident had fallen and collapsed while she was walking. This apart, as per Ex.R1, A.R copy, the doctor has recorded that the victim had self-fallen and died. The learned counsel added that the AR copy is the earliest document that is prepared immediately after the accident and even prior to the registration of FIR in the case, it must be given due sanctity.

3.Per contra, Mr.D.Rameshkumar, the learned counsel for the claimants relied on Ex.P3, Postmortem report, wherein the doctor who conducted the autopsy had recorded that "the deceased died due to cranio cerebral injuries sustained as a result of blunt force trauma and history consistent with road traffic accident". If at all the insurance company is keen in relying on whatever that is recorded in the AR copy, it ought to have examined the very doctor, which would enable the complainant to confront with the doctor's postmortem report. This apart, in its counter, the appellant has not taken a plea which its counsel now takes before this Court. Arguing further, the learned counsel submitted that the husband



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was not at the scene of accident, and the victim was admitted in a hospital by a third party, but the appellant understands as a certain Parvathi from Ex.R1. However, what was believed to be a death by fall got converted into an accident when the postmortem report indicated that the death could be a result of an accident. This has let the investigating officer, who was investigating into the case in Cr.No.183 of 2016 to alter the case from Section 174 Cr.P.C to Section 304 A IPC.

4.This Court closely weighed the rival submissions. It is very apparent that there is a conflict between what Ex.P1 states and what is averred in the claim petition *vis-a-vis* the cause of death of Valliyammal. The F.I.R also indicates that one Dhanalakshmi, the daughter in law of the first claimant and the victim had admitted Valliyammal in the hospital, whereas Ex.R1, AR copy indicates that a certain Parvathi had admitted her. This Court finds that the first claimant was not examined, and if at all some truth is obtained by the investigating officer, then that may necessarily override the allegations made in Ex.P1, F.I.R. This Court considers that the available evidence made on record is not adequate enough to fix liability on the offending auto-rickshaw, but material of better quality is required to conclude to enter a finding on the cause of



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death of Valliyammal.

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5.The whole purpose behind the exercise is to ensure that no offender shall escape for the consequence of one's negligence. After all, this is a branch of law whose core objective is to ensure that such benefits which is required to compensate the loss of a life is not loss to the one who is aggrieved by the loss.

6.This Court, therefore, decides to set aside the award passed by the Tribunal and remands the matter back to the Tribunal with a leave to both sides to adduce further evidence to prove the alleged involvement of the auto-rickshaw.

7.The Tribunal is now directed to take a fresh look as regards the allegation of involvement of the alleged offending auto-rickshaw based on all the evidence now available and to be made available pursuant to the direction herein above given, and dispose of the matter within a period of four (4) months from the date of receipt of the records of the case from this Court.



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N.SESHASAYEE, J.

Anu

8.The Registry is required to dispatch the lower Court's records to the Tribunal latest by 15.12.2023.

9.This Civil Miscellaneous Appeal stands allowed. No costs.
Consequently, the connected miscellaneous petition is closed.

29.11.2023

Anu

Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No

To

The Motor Accident Claims Tribunal
(Special District Judge) at Dharmapuri.

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