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C.M.A.No.1056 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 05.06.2023

PRONOUNCED ON: .07.2023

CORAM:

THE HONOURABLE MR.JUSTICE K.RAJASEKAR

Civil Miscellaneous Appeal No.1056 of 2019

1.Ammasi
2.Vediammal
3.Muniammal
4.Rajammal

... Appellants

Vs.

1.Ganthimathi
2.National Insurance Company,
Krishnagiri

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and decree dated 29.12.2009 made in M.C.O.P.No.1043 of 2008 on the file of the Motor Accidents Claims Tribunal, Principal District Court, Dharmapuri.

For Appellants : Mr.R.Rajaramani
For R1 : Notice Served
For R2 : Mr.S.Arunkumar



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JUDGMENT

The Civil Miscellaneous Appeal has been filed by the appellants against the award dated 29.12.2009, made in M.C.O.P.No.1043 of 2008, on the file of the Motor Accidents Claims Tribunal, Principal District Court, Dharmapuri, wherein, the Motor Accidents Claims Tribunal has dismissed the Claim Petition filed by the claimants, for the death of one Sevathan.

2. The parties are referred to hereunder according to status and ranking before the trial Court.

3. The claimants are the dependants of one Sevathan. On 23.06.2008 at about 3.00 p.m., Sevathan was walking on the left hand side of Kaveripatanam – Palacode road, near Kalguddapatti bus stop, the car bearing registration No.TN 38 R 6910 came in an opposite direction driven by the driver of the first respondent in a rash and negligent manner and hit against him in which, he sustained serious injuries and while taking treatment, he succumbed to injuries on 30.06.2006. The defendants have filed Claim Petition, claiming a sum of Rs.4,00,000/- as compensation from



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both the owner and insurer of the car.

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4. Before the Tribunal, the first respondent was remained ex-parte and the second respondent Insurance Company has contested the claim, contending that, the vehicle/car was not involved in the accident and false FIR was registered after forcibly taken custody of the car by the police. The owner of the vehicle had lodged complaint regarding the same and the claimants are not entitled to claim compensation from the respondents. The claim is also excessive and prayed to dismiss the petition.

5. On the side of the petitioners, P.W.1 was examined and marked documents as Exs.P1 to P4 and on the side of the second respondent, two witnesses were examined as R.W.1 and R.W.2 and marked documents as Exs.R1 to R4.

6. After enquiry, the Tribunal has dismissed the Claim Petition on the ground that the claimants have failed to prove the negligence act of the driver of the first respondent and involvement of the first respondent's vehicle in the accident.



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7. Aggrieved over the dismissal of the Claim Petition, the present Civil Miscellaneous Appeal has been filed.

8. Learned counsel for the appellants/claimants would submit that the Tribunal has dismissed the claim on the basis of the evidence recorded in the cross examination of claimant and without appreciating the entire evidence, based on the portion of the evidence, the Tribunal has arrived its conclusion that the offending vehicle involved in this case is different than the vehicle belongs to the first respondent. The Tribunal failed to appreciate the fact that, witness hailing from very rural area, her evidence has to be appreciated in that background. Without properly appreciating her evidence, finding of fact that the first respondent vehicle has not involved in the accident is not proper and prays to set aside the same.

9. Learned counsel for the second respondent/Insurance Company has submitted that there is a clear admission on the part of the claimants that the vehicle involved in this case is a Maruthi Car, whereas, the claim has been filed against Fiat Uno Car and it has been proved by the



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Insurance Company that the first respondent vehicle has not been involved in the car and the finding of the Tribunal is based on the admission given by the claimants' side witness and prays to confirm the order.

10. I have considered the rival submissions of both sides and also perused the records.

11. The fourth petitioner/fourth claimant has examined herself as P.W.1 in this case and it is her evidence in chief-proof affidavit that the car bearing registration No.TN 38 R 6910 belongs to the first respondent came in the road rashly and negligent manner and hit the deceased Sevathan. In her cross examination, she has stated that she was not aware about the registration number of the vehicle. She has asserted that the vehicle involved in the occurrence is a Maruthi car and she had made statement to the police that the offending vehicle was a Maruthi car.

12. Based on the above admission and the contra evidence adduced on the side of the Insurance Company, the Tribunal has held that the first respondent vehicle was not involved in the accident. Now, I have



considered the entire evidence placed on record.

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13. The standard of proof required for proving negligent act of the tortfeasor in the Claim Petitions is preponderance of probabilities and not required to prove the case as it is required to be done in criminal trial. [Refer *Kusum Lata and Others vs. Satbir and Others* reported in **2011 (3) SCC 646**; *Bimla Devi and Others vs. Himachal Road Transport Corporation and Others* reported in **2009 (13) SCC 530** and *Sunita vs. Rajasthan State Road Transport Corporation and Another* reported in **AIR 2019 SC 994**.] The witness P.W.1 herein is an illiterate and in FIR-Ex.P1, she has stated the vehicle number and she came to know that the driver of the Maruthi car bearing registration No.TN 38 R 6910 has caused the accident after making enquiry. In the FIR, there is no averment whether after the accident the car was stopped at the occurrence place or it is a hit and run case.

14. In the FIR, it is stated that she came to know about the vehicle number only subsequently, after the occurrence and there is no evidence adduced by her before the Tribunal, how she came to know about



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the vehicle number at the time of lodging FIR. She has stated that the accident was occurred due to the negligence act of the driver of the Maruthi Car and other vehicles are not involved in the accident.

15. There is no evidence placed on record before the Tribunal that the vehicle bearing registration No.TN 38 R 6910 of the first respondent is involved in the accident. In the cross examination, she has stated that she was not aware about the registration number of the vehicle. The respondents have examined one Madaiyan-R.W.1, who is said to have been driven the car bearing registration No.TN 38 R 6910, to prove that the vehicle was not involved in the occurrence. He would state that on 23.06.2008 at around 11.00 a.m., he has parked his car near Madanur Village under the coconut tree and the coconut fell on the front windshield and caused scratches on the windshield. To change the windshield, he along with one Vediappan were returning from Kauveripattinam to Krishnagiri around 4.00 p.m., near Nalantha Higher Secondary School, the police patrol stopped their car, taken his car to the Kauveripattinam Police station for enquiry and thereafter, criminal case was registered implicating the car. Against which, he has also sent a representation dated 01.07.2008, to the District Collector, Krishnagiri,



and the said representation was marked as Ex.R2. The respondents have also examined another witness, who is the official of the Insurance Company and through R.W.2, the Motor Claim Form submitted by the owner of the vehicle, dated 29.07.2008 is also marked.

16. To corroborate the evidence of P.W.1, the claimants have relied on Ex.P1-First Information Report, they have not examined anyother eyewitness to the occurrence. To corroborate the evidence of the driver of the car-R.W.1, the respondents have relied on the complaint given by the owner of the car Ex.R1, dated 01.07.2008, wherein, he has specifically alleged that his car was forcibly taken to the police station and false case was registered against him. He has also submitted a claim form to the Insurance Company stating that his vehicle's front windshield was damaged due to coconut fall on the windshield. In the cross examination of R.W.1, it is suggested that after 18 days of occurrence, the vehicle was sent for motor vehicle inspection. The Motor Vehicle Inspection Report has not been marked by either side. R.W.1 witness is also narrated, what was the enquiry conducted by the police to identify the vehicle and how the vehicle belongs to the first respondent was fixed for registration of FIR.



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17. In the cross examination, it was repeatedly asked about the name and model of the car from P.W.1. It is true that she is illiterate, it is not possible to give more specific details regarding the vehicle by her. But she has specifically stated that the car, which was involved in the accident is a Maruthi Car and no other car has involved in the accident. Even she is not able to inform the vehicle number. In the FIR also, the description of the car has been referred as Maruthi Car. In the background of assertion made by P.W.1 that the car involved in the accident is Maruthi Car whereas, the case has been registered against the respondent No.1, which is not a Maruthi Car and it is a FIAT Uno car. Considering the evidence of R.W.1 and exhibits marked in support of him, including the Claim Form filed for claiming damages to his vehicle, this Court is of the view that the evidence adduced on the side of the respondents is more probable than the evidence adduced on the petitioner side and the Tribunal has rightly rejected the case of the claimants. This Court finds no infirmity in the said finding of the Tribunal and also this Court is not inclined to set aside the same. Accordingly, the order passed by the Tribunal is hereby confirmed.



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18. In the result, the Civil Miscellaneous Appeal is dismissed.

The Judgment and Decree passed in M.C.O.P.No.1043 of 2008, dated 29.12.2009, by the Motor Accidents Claims Tribunal, Principal District Judge, Dharmapuri, is confirmed. No order as to costs.

.07.2023

ssi

Index:Yes/No

Speaking Order:Yes/No

Neutral Citation Case: Yes/No

To:

1. The Principal District Judge,
Motor Accidents Claims Tribunal,
Dharmapuri.
2. The Section Officer,
V.R.Section,
High Court,
Chennai.

K.RAJASEKAR,J.



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Pre delivery Judgment made in
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