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C.M.A.No.1714 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.11.2023

CORAM

THE HON'BLE MR. JUSTICE M.DHANDAPANI

C.M.A.No.1714 of 2019

1. Palaniammal
2. Minor.Sudha Shri
3. Minor.Suba Shri
4. Minor.Shri Alagan
5. Sellammal
- Muniyappan (died)

... Appellants

-VS-

1. M.Devarajan
T.M.Mallesan (Died)
2. The Branch Manager,
National Insurance Company limited,
Branch Office 1st floor,
Sharadamma Building,
Bye pass road, Hosur - 635 109.

... Respondents

Prayer:- Civil Miscellaneous Appeal Petition filed under Section 173 of the Motor Vehicle Act, 1988, against the Judgment and decree, dated 06.01.2018 in M.C.O.P.No.845 of 2006 on the file of the Motor Accident Claims Tribunal, Additional District Judge (FAC), Krishnagiri and fix the negligence on both vehicles by allowing this Civil Miscellaneous Appeal.

For Appellant : Mr.SP.Yuaraj

For Respondents : Mr.D.Bhaskaran for R2



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No appearance for R3 to R6
R1 died (Steps due)

ORDER

Assailing the judgment and decree passed by the Tribunal in and by which the Tribunal had dismissed the MCOP petition, the present appeal has been filed by the claimant/appellant seeking compensation.

2. The case of the appellant On 31.10.2004 , when the deceased, viz., Santhakumar @ Sivasanthakumar was walking on road, the 1st respondent drove his vehicle viz., the Bajaj Pulsar Motor Cycle, in opposite side to the deceased in rash and negligent manner without adhering to the traffic rules and dashed against him. Immediately, the deceased was taken to the hospital for treatment, wherein he was succumbed to his injuries and on 01.11.2004. Thereafter, the petitioners herein who are the dependents of the deceased, filed M.C.O.P.No.6 of 2005 before the Motor Accident Claims Tribunal, Puducherry claiming compensation of Rs.20,00,000/-. The Tribunal, vide Award dated 11.10.2007, had dismissed the claim for the petitioners. Aggrieved by the said award, the petitioners are before this Court by filing this Appeal.

3. The learned counsel for the appellants submitted that the accident had happened on 31.10.2004 and however, the FIR was register on 02.11.2004



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based on the information given by one Moorthy. Since the deceased persons sustained grievous injuries and admitted in hospital, so he was not able to made a complaint to the concerned Police for registration of the case. However, an Eye witness of the occurrence made a complaint on 02.11.2004. Further one Ismail, an eyewitness, was examination as PW2 and he has clearly deposed that the accident had happened on 31.10.2004 at 9.30 P.M. The deceased was walking in the left side of Pondicherry-Villupuram Main road, at that time, on the opposite direction, the motor cycle Reg. No.PY 01 X 8285 driven by one Dakshina moorthy, owned by the first respondent and insured with the second respondent, came in speed manner and dashed against the deceased and he fell down unconscious. In view of the deposition, it is clearly seen that the accident had happened due to rash and negligent driving of the rider of the motor cycle. Without considering the factual aspect, the learned Tribunal has dismissed the claim petition, which is not sustainable one.

4. The learned counsel for the second respondent Insurance company submitted that though the appellants claimants claimed that the accident had occurred on 31.10.2004 and one Moorthy made a complaint before the concerned police on 02.11.2004 and the said Moorthy has not examined before the Tribunal and one Ismail has been examined as eyewitness(PW2) and he



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deposed that the vehicle was driving by one Dhakshina Moorthy, which was insured with the second respondent. Such statement is not acceptable one as the said Ismail is not an eyewitness. Further, immediately after the accident, the deceased persons was admitted in PHC and thereafter, he was shifted to Government Hospitals. The Doctors, who have given treatment to the deceased vix., RW1 and RW2 and they clearly deposed that the mother of the deceased person made a information before the doctors stated that while driving the vehicle TVS 50 under the influence of alcohol at about 7.30 pm on 31.10.2004 and the same was noted in the hospital records. The said records were marked before the Tribunal as Ex.A1 (series). On perusal of Ex.A1 and statement of doctors and also post mortem report, it is clearly seen that the deceased person, under influence of alcohol, was driving the TVS XL vehicle and dashed against the Pulsar vehicle which was driving by one Dhakshinamoorthy and sustained grievous injuries and the said Dhakshinamoorthy was not examined before the Tribunal. In order to avail such benefit, the claimant has implicated the other vehicle which was not involved in the accident and claiming compensation. The Tribunal, considering all these facts, rightly dismissed the claim petition made by the appellants/claimants.

5. Heard the learned counsel for the appellants and the learned counsel



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for the second respondent and perused the materials available on record.

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6. The respondent- Company submits that there are so many contradictions in the claim petition and the FIR and the same has to be looked into by this Court in accordance with law. He also further submitted that the first respondent therein, who is the owner of the vehicle has not appeared before the Court. On perusal of the deposition of PW1, who is the wife of the deceased, is not the eyewitness to the accident and stated that at the time of accident, the deceased Sathanakumar was walking in the left side of Pondicherry-Villupuram Main Road, and at that time, the motor cycle bearing No.PY X 8285 came in his opposite direction and hit against the deceased and he fell down and became unconscious and thereafter, he went from the place to inform his wife. During cross examination, the Doctors RW1 and RW2 stated that the deceased drove the vehicle in a drunken mood and fell down, sustained injuries. Thereafter, he admitted in the hospital and expired. On perusal of Ex.B1/ Post-mortem report is also reveals that the deceased has consumed alcohol.

7. On a perusal of the deposition of the witnesses and deposition of the doctors and the post mortem, it is clearly seen that a false case has been set up



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by the claimants as if the deceased was hit by a motor cycle and sustained injuries and expired. The appellants herein have not proved its case beyond reasonable doubts. That being the case, the Court below has rightly held that the appellants has filed a false claim petition. Hence, this Court is also not inclined to interfere with the award passed by the Court below.

8. Accordingly, this Civil Miscellaneous Appeal is dismissed. No costs.

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Rli

Index: Yes/No

NCS : Yes/No

To

The Motor Accident Claims Tribunal, Additional District Judge (FAC),
Krishnagiri



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M.DHANDAPANI, J.

Rli

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