



C.M.A.No.1511 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.11.2023

C O R A M

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.No.1511 of 2019
and C.M.P.No.4215 of 2019

The Divisional Manager,
M/s.The New India Assurance,
Company Limited,
Motor Third Party Claims Office,
No.69 & 70, Sheikpet Nadu Streetm
Kanchipuram.

... Appellant
/Respondent-II

Vs

1.R.Chinnamma
C.Ravi (died)
2.S.Mariyamma
3.S.Velankani
4.R.Saran Kumar
5.R.Vijaya Kumar (minor)
6.C.Kamala

... Respondents I to IV
/Petitioners I to IV

7.N.Thangavelu

... Respondents VII
/Respondent- I



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Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, as against the Decree and Judgment dated 19th August, 2015, passed in M.C.O.P.No.41 of 2012 by the Motor Accidents Claims Tribunal, (In the Court of District Judge-II) at Kanchipuram.

For Appellant	... M/s.V.Parivallal
For Respondents	... No Appearance [R1 to R7]

JUDGMENT

Challenging the impugned award dated 19.08.2015 passed by the Motor Accident Claims Tribunal, District Judge-II, Kanchipuram in M.C.O.P.No.41 of 2012, the Appellant-Insurance Company has filed the present appeal

2. It is the case of the claimants that on 23.11.2011, at about 2.15 p.m., when the deceased was travelling as a passenger in the 1st respondent's bus bearing Reg No.TN 23-AR-4141 from Kanchipuram to Arakonam driven by its driver in a rash and negligent manner, the bus dived into a deep pit and due to the said impact, the deceased was thrown out of the bus and caught under the rear wheel of the bus and sustained fatal injuries and died on the way to hospital. The accident is due to the rash and negligent driving of the 1st



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Respondent's bus. Therefore, the claimants have filed the claim petition. The 1st and 2nd claimants claims to be the adopted father and mother of the decesased while the claimants 3 to 6 are the children of Claimants 1 & 2 and the 7th Respondent is the mother of the 2nd Claimant.

3. Before the Tribunal, the 1st claimant examined herself as P.W.1 and examined P.W.2 and marked viz., Ex.P.1 to Ex.P.10. No witnesses were examined on the side of the respondents nor any documents were marked.. After considering all the oral and documentary evidence, the Tribunal had awarded the compensation amount of Rs.7,50,000/- to the claimants and fastened the liability on the Appellant-Insurance Company. Aggrieved by the said award dated 19.08.2015, the Appellant-Insurance Company has filed the present appeal.

4. Learned counsel appearing for the Appellant/Insurance Company submitted that though the claimants claims the deceased to be their adopted son, however, no material evidencing the said adoption has been marked as



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exhibit. It is the further submission of the learned counsel that Ex.P-6, the Post mortem certificate though identifies the deceased and however, Ex-P8, the relationship certificate, mentions the name of the parents of the deceased as Late.Isravel and Mangamma and the name of the claimants 1 & 2 does not reflect in any of the documents. In the absence of any proof relating to the deceased being the adopted son of the claimants 1 & 2, the claimants have no right to file the claim petition seeking compensation and the said fact has not been appreciated by the Tribunal and merely relying upon the decision of the Hon'ble Apex Court reported in **1987 ACJ Page 561**, the Tribunal has allowed the claim petition which requires interference.

5. Though notice was sent to Respondents 1 to 7 and their name printed in the causelist, none appeared on behalf of the respondents today. Considering the pendency of the appeal which is of the year 2019, this Court is inclined to dispose of the same based on the materials available on record.

6. This Court heard the learned counsel appearing for the Appellant-



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Insurance Company and perused the materials available on record.

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7. The factum of the accident is not in dispute and so also the liability. Therefore, this Court is not entering into the said aspect. The main issue which has been canvassed by the Appellant before this Court is that the claimants have claimed the deceased to be their adopted son however, no materials relating to the same has been placed and therefore, the claim petition cannot be maintained by the claimants.

8. A perusal of the impugned order reveals that no materials evidencing the adoption of the deceased by claimants 1 & 2 has been placed before the Tribunal. Ex-P-8 is the relationship certificate which shows the name of the father and mother of the deceased as Late.Isravel and Mangammal. Ex-P-7 is the death certificate of the deceased except these documents no other documents which evidences adoption. The two documents which have been placed before the Tribunal nowhere shows the name of the claimants 1 & 2 as the father and mother of the deceased. The adoption of the deceased by



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claimants 1 & 2 in accordance with law has not been established. It is the mere claim of the claimants that the deceased is their adoptive son except for such claim there is no material which shows that the deceased is their adoptive son. In fact, there is no material placed by the claimants to show as to the date on which the deceased was adopted. The Tribunal has awarded compensation to the claimants by placing reliance upon the decision reported in **1987 ACT Page No.561** wherein, it has been held that the claimants can claim the compensation for the death of the foster son even though not validly been adopted as per Hindu Adoption and Maintenance Act 1956. There could be no quarrel that the aforesaid preposition of law but there should be some *iota* of material to suggest that the deceased was adopted by the claimants 1 & 2 however, except for a bland statement there is no material which evidences adoption of deceased by claimants 1 & 2. It is the duty of the claimants to prove that the deceased was adopted by the claimants and only when such proof is filed then it becomes the duty of the appellant to rebut such evidences. In the absence of any evidence filed by the claimants to establish the said adoption, there arises no necessity for the appellants to disprove that adoption



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had not taken place. The onus is on the claimants to prove the adoption and not on the appellants to disprove the said claim. Therefore, the finding recorded by the Tribunal is wholly perverse, illegal and unreasonable and illogical which cannot be sustained. Once the adoption itself is not proved, the claim petition filed by the claimants claiming compensation itself is not maintainable and necessarily, the compensation award has to be set aside.

9. Accordingly, the appeal is allowed and the impugned award of the Tribunal is set aside. Deposit, if any made by the Appellant-Insurance Company, the Appellant is at liberty to withdraw the same by filing appropriate application. There shall be no order as to costs in the present appeal. Consequently, the connected Miscellaneous Petition is closed.

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Index : Yes / No
Speaking Order / Non-speaking order
Neutral Citation Case : Yes / No

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M.DHANDAPANI, J

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To

- 1.The Motor Accident Claims Tribunal Cum
In the Court of District Judge-II,
Kanchipuram
- 2.The Section Officer,
V.R. Section,
High Court, Madras.

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