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C.M.A.No.1853 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.10.2024

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THE HONOURABLE MRS. JUSTICE J.NISHA BANU

AND

THE HONOURABLE MRS. JUSTICE R. KALAIMATHI

C.M.A.No.1853 of 2022

and

C.M.P.No.15627 of 2021

1. N.Kaliyappan

2. K.Sathish Kumar

3. K.Suresh Kumar

4. K.Chithra

...Appellants

vs.

1. N. Ramakrishnan

2. National Insurance Company Limited,

No.751, Anna Salai,

Chennai – 600 002

...Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the Judgment and Decretal Order dated 27.11.2019 made in M.C.O.P.No.5682 of 2015 on the file of the Motor Accident Claims Tribunal, Chief Judge, Court of Small Causes, Chennai and enhance the award amount.

For Appellants : Mr.J.Mahalingam



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For Respondents : Mr.D.Baskaran for R2

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JUDGMENT

(Judgment of the Court was made by Mrs.R.Kalaimathi, J.)

Being aggrieved by the order of dismissal dated 27.11.2019 made in M.C.O.P.No.5682 of 2015 on the file of the learned Chief Judge, Court of Small Causes, Chennai, the claimants herein have preferred this appeal.

2. Claim petition was filed under Section 163 A of Motor Vehicles Act, 1988 (*hereinafter referred to as the Act*) read with Rule 3 of Motor Accident Claims Tribunal Rules, claiming compensation of Rs.33,00,000/- for the death of Rajeshwari who is the wife of the 1st appellant/1st claimant and mother of 2 to 4 appellants/claimants in a road traffic accident that occurred on 27.12.2006.

3. Facts led to the filing of O.P is set out hereunder:-

On 27.12.2006, at about 2.45 a.m., while the deceased was travelling as a pillion rider in the motor cycle bearing Registration No.TN02 V 9860 along Poonamallee High Road, near Maduravoyal, the rider of the two wheeler hit against an unknown vehicle. Due to the said impact, the pillion



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rider fell from the motor cycle and died on the way to hospital. As the accident occurred due to the rash and negligent driving of the rider of the motor cycle, the first respondent as the owner of the said motor cycle and the second respondent who is the insurer of the same, the first and second respondent are vicariously and statutorily liable to pay compensation.

4. Per contra, it has been stated in the counter that there was contract to cover the risk of the pillion rider. The claimants are put to strict proof of involvement of the first respondent vehicle in the alleged incident.

5. Upon consideration, the Tribunal dismissed the claim petition stating that due to non-production of FIR, copy of the insurance policy and driving licence of the rider of the first respondent vehicle, liability cannot be fixed against the respondents and it was further concluded that as to how the accident occurred was not proved, chose to dismiss the claim petition.

6. At trial, the 1st claimant has examined himself as P.W.1 and one Ramesh (P.W.2) has been examined as eye witness. 12 documents were marked on the claimants side. On the second respondent side, neither any oral evidence is let in nor documents is marked.



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7. It has come on record through P.W.2 that he witnessed the accident. It is the evidence of P.W.2 that, on 27.12.2006, he had been to the Sri Velu Automobiles situated at Poonamallee High Road in order to repair his two wheeler. At about 2.45 a.m., the mechanic Moorthy was effecting repairs on his two wheeler and he was sitting at the workshop. At that time, 300 feet away from the workshop, driver of the lorry stopped his vehicle and got down, and he was talking to a person. Within a few minutes, a person came in a motor cycle with a female as a pillion rider, the motor cycle hit upon the rear side of the lorry and he saw the persons lying down. The lorry was taken away by its driver and the rear side lights were not on, and he was not in a position to note the registration number of the lorry.

8. During the cross examination, P.W.2 would state that he lodged complaint at the police station orally. It is his evidence that he came to know about the lodging of the complaint through the husband of deceased Rajeswari.

9. The claim petition was filed under Section 163 A of the Act. When



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a claim petition was filed under Section 163 A of the Act, then the claimants need not to plead and prove as to the negligence. Section 163 A of the Act is based on the principle of no fault liability. However, the claimants have to prove that the vehicle of the first respondent had involved in the accident. But P.W.2 has nowhere either in the chief examination or in the cross examination has stated about the registration number of the motor cycle.

10. The 1st claimant who is the husband of the deceased P.W.1 would state that, due to the rash and negligent driving of the rider of the motor cycle bearing Registration No. TN02 V 9860, the accident occurred and therefore, the owner of the motor cycle namely the first respondent and second respondent insurance company are liable to pay compensation to them.

11. P.W.1 and P.W.2 have given different versions as to how the accident occurred. From the death report of the deceased Rajeshwari (Ex.P.2) dated 28.12.2006, it is pellucid that case was registered in Crime No.244 of 2006 by the Poonamallee Highways Traffic Investigation and the case was registered under Section 279 and 304-A IPC. The claimants are non-suited for the following reasons:-



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- i. P.W.1 and P.W.2 have given different versions as to how the accident occurred though P.W.1 is not a ocular witness.
- ii. P.W.2 who is the ocular witness has not stated about the registration number of the motor cycle.
- iii. Both witness have not stated about the lodging of complaint at all, which is so unusual.
- iv. Presence of P.W.2 at the place of occurrence is highly doubtful. Because, he would state that at 2.45 a.m., he was sitting at the two wheeler mechanic shop and mechanic was attending to his two wheeler, which is totally unbelievable.
- v. MV report of the motor cycle is not filed.
- vi. Post-mortem certificate of deceased Rajeshwari is not filed.

12. For the aforestated reasons, we are of the considered view that the order passed by the Tribunal does not suffer from any perversity or infirmity.

13. Based on the aforestated discussions and observations, this Civil Miscellaneous Appeal stands dismissed. There is no order as to costs. Consequently, connected Civil Miscellaneous Petition stands closed.



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(J.N.B.,J.) (R.K.M.,J.)

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Index : Yes/No
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Speaking Order/Non-Speaking Order
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J.NISHA BANU, J.

and

R.KALAIMATHI, J.

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To

1. The Motor Accident Claims Tribunal,
Court of Small Causes, Chennai
2. The Section Officer,
VR Section,
High Court, Madras.

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