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C.M.A.No.2443 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.11.2024

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.No.2443 of 2019

1.Revathi

2.R.Ramesh Babu

.. Appellants

Vs.

1.M/s.Ponmari Enterprises Pvt. Ltd.,
No.2/495, Thiruvallur High Road,
M.A.Nagar, Red Hills,
Chennai - 600 052.

2.National Insurance Co., Ltd.,
No.751, Anna Salai, 3rd Floor,
Chennai - 02.

.. Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 27.09.2018 made in M.C.O.P.No.5134 of 2015 on the file of Motor Accident Claims Tribunal, (II Small Causes Court), Chennai.

For Appellants : Mr.K.Varadha Kamaraj
For Respondents : Mrs.R.Sreevidhya for R2
Notice returned for R1



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J U D G M E N T

WEB COPY This appellant/claimant has come forward with this appeal seeking enhancement of compensation by challenging the decree and judgment dated 27.09.2018 made in M.C.O.P.No.5134 of 2015 on the file of Motor Accident Claims Tribunal, (II Small Causes Court), Chennai.

2.Brief fact which are necessary for disposal of this appeal is as follows:-

On 14.05.2014, at about 02.45 hrs, while the deceased Venkatesh Babu was riding the motorcycle bearing Reg.No.TN 18 C 3322 and was proceeding towards Nugambakkam Kulakarai Salai, an unknown vehicle hit the vehicle of the said Venkatesh Babu. Due to the accident, the said Venkatesh babu died on the spot. Thereafter, the law enforcing agency registered a case in Cr.No.243/TN1/2014 for the offence under Section 279, 337(1) Count and 304(A) of IPC as against the driver of the unknown vehicle. The deceased was aged about 20 years at the time of accident and was a B.Tech student. The 1st claimant is the father and the 2nd claimant is the mother of the deceased and they have filed a claim Petition before the



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Motor Accidents Claims Tribunal under Section 166 of the Motor Vehicle Act, claiming compensation of Rs.20,00,000/- for the death of Venkatesh Babu as against the 1st and 2nd respondents who are the owner and insurer of the said motor cycle and the same was taken on file in M.C.O.P.No.5134 of 2015.

3. Before the Tribunal, during trial, in order to prove the case, on the side of the claimants, one witnesses was examined as PW1 and 11 documents viz., Exs.P1 to P11 were marked. On the side of the respondents, no oral and documentary evidence were marked. The Tribunal, considering the oral and documentary evidence, dismissed the petition holding that the claimants are not entitled to claim compensation against the respondents. Challenging the same, the appellants have filed this appeal.

4. The learned counsel for the appellants/claimants submitted that the Tribunal ought to have allowed the claim in faovur of the claimants without going into the negligence factor. According to the learned counsel, while



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the deceased riding the motor cycle bearing Reg.No. Reg.No.TN 18 C 3322 and was proceeding towards Nungambakkam Salai, an unknown vehicle hit the deceased and he died on the spot. The first respondent being the owner of the motorcycle and the second respondent being the insurer of the said vehicle are liable to pay compensation, jointly and severally to the claimants.

5. Per contra, the learned counsel for the second respondent submitted that the Tribunal upon considering the entire materials placed on record, dismissed the petition and therefore, no interference is warranted by this Court. Hence, this Court may dismiss the appeal.

6. This Court gave its careful consideration to the submissions advanced by the learned counsel appearing on either side and perused the materials available on record.

7. The Tribunal held that there is no material to show whether the vehicle which hit the deceased is a two wheeler or four wheeler or a lorry and the claimants have failed to summon the Police officers to speak about the investigation done and the steps taken to find out the offending vehicle. The Tribunal further held that the second respondent has claimed that they



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came to know about the accident, from their investigator that there was no involvement of the other vehicle in the accident. In fact, they have not examined the investigator said to have investigated the matter as a witness before the Tribunal. Since the appellants have failed to prove the accident, the Tribunal has dismissed the claim petition.

8. As rightly held by the Tribunal that the appellants have not produced any material or in any event examined the eye witness to show that the accident was caused by the unknown vehicle, the pillion rider said to have been traveled along with the said deceased Venkatesh Babu, has also not been examined to prove the accident. It is the specific case of the appellants before the Tribunal that the pillion rider also sustained injuries, but the pillion rider was not examined before the Tribunal as a witness is a fatal to this case. The burden is heavily on the appellants to prove the accident and the liability of the second respondent insurance company. The appellants have failed to discharge their burden of proof. It is relevant to extract the order of the Tribunal in MCOP.No.5134 of 2014, in which paragraph No.12 reads as under:



12. When a person comes to the Court claiming compensation then he has to plead and prove the accident, negligence, loss of income and the quantum of compensation and the person who has to pay it. Even though it is a summary proceeding, they are still governed by the law of Pleadings and Law of Evidence. They cannot expect the court to do what they ought to have done or mould the relief and grant compensation to them. Without discharging their duty they cannot contend that as this is a social welfare legislation, compensation has to be awarded just because the person had died when he was going on a motor cycle."

9. Taking into consideration the facts and circumstances of the case, the Tribunal came to the conclusion that the accident is not occurred due to the rash and negligence of the driver of the first respondent's two wheeler. Hence, either the owner of the said motor cycle nor the insurer of the same are held liable to pay compensation to the claimants. The said finding arrived at by the Tribunal is in order and no grounds have been made by the claimants to interfere with the order of the Tribunal. Therefore, no interference is warranted for the compensation awarded by the Tribunal.



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WEB COPY 10. With the above observation, the appeal is dismissed. No costs.

The award passed by the Tribunal is confirmed.

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msv

Index : Yes

Speaking Order : Yes

To

Motor Accident Claims Tribunal,
(II Small Causes Court), Chennai.



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M.DHANDAPANI,J.

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