



C.M.A.No.3474 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 22.03.2024

PRONOUNCED ON : 20.06.2024

CORAM

THE HONOURABLE MR.JUSTICE K.RAJASEKAR

C.M.A.No.3474 of 2021

1.Tamilarasi

2.Vanaja

3.Girija

... Appellants/Claimants

Vs.

1.Suthakar

2.M/s.Cholamandalam MS General Insurance
Company Limited,
Branch Office,
Represented by its Branch Manager,
No.41, 2nd Floor, TAB Complex,
Bharadhidasan Salai,
Cantonement,
Tiruchirappalli – 620 001.

... Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1989, against the order and decretal order in M.C.O.P.No.316 of 2017 dated 30.07.2021 on the file of the Motor Accident Claims Tribunal/Principal District Judge, Perambalur.



For Appellants : Mr.S.Kamadevan

For Respondents : No appearance

JUDGMENT

The present Civil Miscellaneous Appeal has been filed challenging the dismissal of the claim petition in M.C.O.P.No.316 of 2017 dated 30.07.2021 on the file of the Motor Accident Claims Tribunal/Principal District Judge, Perambalur.

2. For the sake of convenience, the parties are referred herein according to their litigative status and rank before the Tribunal.

3. The claimants are the dependants of the deceased Asokan, who died in the accident taken place on 18.03.2017 at about 7.45 PM. According to the petitioners, on the date of occurrence, the deceased Asokan travelled as a pillion rider in the two wheeler along with the first respondent, rider of the two wheeler. When they were proceeding from South to North in Trichy to Chennai National Highway near Northern Side Bridge, Siruvachur, the first respondent had driven his two wheeler in a rash and negligent manner and



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suddenly applied brake, which resulted in them falling down from the vehicle. Thereby, the first respondent and the pillion rider sustained grievous injuries. Immediately, the deceased Asokan as well as the first respondent were taken to Government Hospital, Perambalur and on the basis of the statement improperly recorded from the first respondent, FIR was registered in Crime No.271 of 2017 under Section 279, 337 and 304(A) of IPC. Aggrieved over the loss of the deceased Asokan, the claimants have come forward with the claim petition seeking compensation of Rs.20,00,000/- by invoking Section 166 of the Motor Vehicles Act.

4. Before the Tribunal, the first respondent remained ex-parte. The second respondent/Insurance Company filed a counter and contended that the two wheeler was driven by its rider in a slow speed and some unknown vehicle had dashed the two wheeler, which resulted in the accident. Based on the statement recorded from the rider of the two wheeler, a criminal case was also registered. It is further contended that after a long delay, the claim petition has been filed stating that as if the deceased was died due to the negligent act committed by the first respondent/owner of the vehicle. They have also disputed the age, occupation and income of the deceased.



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5. The Tribunal, after considering the evidence placed on record, has dismissed the claim petition and held that due to the negligent act of the unknown vehicle, the accident had taken place and the petitioners are not entitled to claim compensation from the respondents herein.

6. Aggrieved over the dismissal of the claim petition, the present appeal is filed by the appellants/claimants.

7. The learned counsel for the appellants/claimants would submit that there is an evidence placed on record to show that the rider of the two wheeler had negligently driven the vehicle and his statement has been forcibly obtained by the Police as if some unknown vehicle had dashed his two wheeler and caused the accident. The first respondent was also examined and he categorically admitted that he has driven the vehicle in a rash and negligent manner. Hence, the learned counsel prays to award compensation.

8. Per contra, it is the contention of the second respondent/Insurance Company that there is a collusion between the first respondent and the



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claimants and after completion of investigation in the criminal case, the claimants have come forward with the claim petition. It is further contended that the first respondent has also lodged a separate complaint after long delay for the purpose of getting compensation for helping the claimants herein and the Tribunal has rightly dismissed the claim petition and prays to confirm the award.

9. In this case, the first respondent, who is the owner of the vehicle, was riding the two wheeler at the time of accident. Before the Tribunal, the first respondent has not come forward to contest the claim. Per contra, he has come forward to adduce evidence as one of the witnesses on the side of the appellants/claimants. The first respondent was examined as an eye witness to the occurrence and in his evidence, he has admitted that the Police has registered the criminal case against the unknown vehicle based on the statement recorded from him. He has also disputed the fact that there is an involvement of unknown vehicle in the accident. He admits that he has come forward to lodge another complaint, 22 days after the accident. He also admits that he has given a statement to the Police that unknown vehicle has hit on the two wheeler, which resulted in the accident. He also stated in



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his evidence that he is not having valid driving licence to drive the two wheeler. Except this evidence, the appellants have not come forward to adduce any other evidence to prove the occurrence.

10. Admittedly, a complaint was lodged against an unknown vehicle based on the statement recorded from the first respondent herein (P.W.2), while he was undergoing treatment in the hospital. Based on the said complaint, FIR was registered and the Police have also investigated the case. Subsequently, after 22 days, the first respondent has come forward with another version accepting the guilt that he rode the vehicle in a negligent manner, which resulted in the accident.

11. Per contra, on the side of the second respondent/Insurance Company, the official of the Insurance Company was examined and he has stated that immediately after the occurrence, an FIR was registered as “Hit and Run” case. The first respondent has not come forward to report the accident to the Insurance Company. It was suggested to the him that for the purpose of avoiding the criminal prosecution, P.W.2 has come forward with a false complaint that an unknown vehicle has hit the two wheeler and



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subsequently, he has come forward with the true fact that he is the person who has negligently driven the two wheeler and caused the accident. This suggestion and the evidence of P.W.2 only shows that the evidence of P.W.2 could not be relied on for the purpose of deciding the case of this nature.

12. It is an admitted fact that immediately after the accident, P.W.2 was also admitted in the hospital and he has stated that an unknown vehicle has hit his two wheeler and thereafter, he has not objected to the registration of FIR and waited for almost 22 days to lodge another complaint. It is also the evidence of P.W.2 that before sending another complaint to the Police, he consulted with the first appellant/P.W.1. Hence, the evidence of P.W.2 is not reliable even for the purpose of fixing the *prima facie* case in favour of the claimants herein.

13. After eschewing the evidence of P.W.2, the available records are also not sufficient to establish the case of the claimants on preponderance of probabilities. Under the said circumstances, this Court is of the view that the claimants have failed to establish their case and this Court finds no infirmity in the findings of the Tribunal.



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14. Accordingly, the Civil Miscellaneous Appeal is dismissed and the order passed by the Tribunal stands confirmed. There shall be no order as to costs.

20.06.2024

Index : Yes / No
Speaking Order : Yes / No
Neutral Citation : Yes / No
Lm

To

1.The Motor Accident Claims Tribunal/
Principal District Judge,
Perambalur.

2.The Section Officer,
V.R. Section,
High Court, Chennai.



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K.RAJASEKAR,J.

Lm

Judgment made in
C.M.A.No.3474 of 2021

20.06.2024