



C.M.A.(MD)No. 835 of 2024

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Dated: 12.08.2024

CORAM:

THE HON'BLE MR.JUSTICE **SUNDER MOHAN**

C.M.A.(MD)No.835 of 2024

1. Lakshmi
2. Sankaranarayanan
3. Vasudevan

..Appellants/claimants

Vs.

1. Muthulakshmi
2. The Divisional Manager
M/s. National Insurance Co Ltd.,
No3, North Veli Street, Madurai-1
Muthulakhsi(Died)

..Respondents/Respondents

Prayer : This Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 to set aside the fair and decretal order dated 22.12.2023 made in MCOP No.428 of 2013 on the file of the Special Court , Motor Accident Claims Tribunal, Madurai.

For Appellants : Mr.S.Prabhu

For R1 : Dispensed with

For R2 : Mr.V.Sakthivel

JUDGMENT

Aggrieved by the dismissal of the claim petition filed by the claimants, the instant appeal has been filed.



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2. The claimants preferred claim petition stating that on 04.04.2013 at about 12.45 p.m., when the deceased was travelling in a van with electrical goods, the driver of the vehicle drove the same in a rash and negligent manner, as a result of which, the van capsized and that the deceased fell down and sustained fatal injuries.

3. The first respondent/owner of the vehicle was set *exparte* before the Tribunal.

4. The respondents filed counter stating that the accident did not take place in the manner averred; that there are no eyewitnesses to the case and in the absence of any evidence to prove the accident, the claim petition is liable to be dismissed and in any case, the claim is excessive.

5. The claimants examined P.W.1/wife of the deceased and marked exhibits Ex.P.1 to P.10. The respondents had examined R.W1/Post Mortem doctor and R.W.2, besides Exs.R.1 to R6. The Court document is marked as Ex.C.1



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6. The Tribunal after taking into consideration the oral and documentary evidence held that the claimants had not established that the accident took place in the manner stated in the claim petition and in the absence of any proof to show that the deceased died due to a motor vehicle accident, the claim petition is not maintainable.

7. The learned counsel for the appellant submitted that the finding of the Tribunal is erroneous ; that the post mortem certificate which is relied upon by the Tribunal is not conclusive proof of the time of accident; that the First Information Report filed by the Village Administrative Officer would show that the accident took place and that merely because the police closed the case as 'undetected' as they could not ascertain the driver of the offending vehicle, the claim petition cannot be dismissed.

8. The learned counsel appearing for the second respondent per contra submitted that in the absence of any evidence to prove that the vehicle was involved in the accident, the Tribunal was right in dismissing the claim petition and prayed for dismissal of the appeal.



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9. The point for determination in the instant appeal is:

“Whether the Tribunal was right in dismissing the claim petition?”

10. The record reveals that the police investigated the case and closed the First Information Report as “undetected”. The claimants have not examined any witnesses to prove the accident. The wife of the deceased came to know about the incident later and hence she is a hearsay witness. The claimants also had not taken any effort to summon the records of the police to at least establish that the accident took place.

11. This Court is of the view that in the circumstances of the case, it is desirable that one more opportunity may be given to the claimants to prove their case. The claimants cannot be made to suffer merely because they had not effectively pursued their claim petition. Therefore, without expressing any opinion on the merits of the case, this Court is of the view that it is desirable to remit the case before the Tribunal to allow the parties concerned to produce additional evidence, if any in accordance with law.



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12.It is needless to say that the Tribunal on consideration of such evidence may pass such orders as it thinks fit and proper in the circumstances of this case without being influenced by any of the observation made in this order.

13. With the above observation, this Civil Miscellaneous Appeal stands disposed of. No costs.

12.08.2024

NCC : Yes/No
Index : Yes/No
Internet: Yes/No
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To:

1. The Special Court , Motor Accident Claims Tribunal, Madurai.
- 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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SUNDER MOHAN,J.

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