



C.M.A.(MD).No.764 of 2019

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 27.11.2023

PRONOUNCED ON : 12.01.2024

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

C.M.A.(MD)No.764 of 2019

1.Palanivel
2.Rasammal

... Appellants

Vs.

1.R.Suresh Kumar
2.Annadurai
3.C.Raja
4.United India Insurance Company Ltd.,
18/116, I Floor, Saravana Complex,
Mettupalayam Road, Thudialur,
Coimbatore.

... Respondents

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the fair and decretal order dated 26.10.2018 made in M.C.O.P.No.35 of 2013 by the Motor Accident Claims Tribunal, Kulithalai.

For Appellant : Mr.N.Mohan
For R4 : Mr.A.Shajahan
For R2 : Mr.Sadeshkumar
For Respondents 1 and 3: No Appearance



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JUDGMENT

This Civil Miscellaneous Appeal has been directed as against the award passed by the learned Motor Accident Claims Tribunal, at Kulithalai in M.C.O.P.No.35 of 2013 dated 26.10.2018 by the appellants/petitioners.

2.For the sake of convenience, the parties are addressed herein as per the rank in M.C.O.P.No.35 of 2013.

3.The brief facts leading to the filing of the Civil Miscellaneous Appeal is as follows:-

On 07.02.2012, at about 01.30 p.m., at Coimbatore – Pollachi Road, near Arokia Restaurant, one Karthik drove a car bearing registration No.TN-02-C-9127. The said car was taken to the third respondent's workshop for repairing the same. It is contended by the petitioners that after repairing the car, the said Karthik had taken the car for trial drive along with Satyaraj, who was seated on the left side of the front seat. Due to rash and negligent driving of the Karthik, the car fell into a ditch. Both Karthik and the said Satyaraj sustained severe grievous

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injuries. As the result of which, Satyaraj died and both of them were transferred to Coimbatore Government Medical hospital, wherein the said Satyaraj was declared died. The deceased Satyaraj was 26 years old at the time of death. Seeking compensation of Rs.15,00,000/- for the death, the petitioners have filed the claim petition against the respondents.

4.The respondents 1 and 2 are the owners of the vehicle and the third respondent is the owner of the workshop wherein the car of the respondents 1 and 2 was sent for repair. The fourth respondent is the insurance company with which the car involved in the accident on the fateful day had been insured. The fourth respondent had filed a counter refuting each and every allegations that was setforth in the claim petition and had categorically submitted in the counter that the car bearing registration No.TN-02-C-9127 was not at all insured with the fourth respondent insurance company. That apart it was also mentioned in the said counter that the contents of the claim petition are fully contrary to the First Information Report registered by the jurisdictional police with respect to the said accident.



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5.The second respondent has also filed a counter refuting the allegations set forth in the claim petition. It was strongly putforth in the said counter that no FIR has been registered as against the second respondent and hence, the second respondent has to be exonerated from the main petition itself. It was further stated in the said counter that FIR had been registered in Crime No.54 of 2012 by the Madukkarai police as against deceased on the complaint of the said Karthik.

6.The learned Tribunal had framed four issues. Two witnesses P.W. 1 and P.W.2 were examined on the side of the petitioners and Ex.P1 to Ex.P3 were marked and on the side of the respondents, one witness R.W. 1 was examined and three documents Ex.R1 to Ex.R3 were marked.

7.On the basis of the oral and documentary evidence adduced and considering the arguments putforth by the respective parties, the learned Tribunal proceeded to conclude that the petitioners have miserably failed to prove that the vehicle in question which was claimed to have involved in the accident was driven by said Karthik and deceased Satyaraj was



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seated in the front left seat of the said car. The learned Tribunal had proceeded to record that the said Karthik had lodged a complaint as against the said Satyaraj before the Madukkarai Police Station on the basis of which Crime No.54 of 2012 has been registered as against the deceased. Though it is claimed by the petitioners that the deceased was working in the third respondent's workshop for a monthly salary of Rs. 15,000/-, the same was also not proved before the learned Tribunal. That apart the respondents 1 and 3 were set exparte by the learned Tribunal and on behalf of the second respondent, it was vehemently argued that the deceased Satyaraj was the reason for the aforesaid accident and in the absence of any FIR as against the second respondent, it is insisted before the learned Tribunal on behalf of the second respondent that the second respondent was an unnecessary party for the said claim petition. That apart, the fourth respondent had also argued before the learned Tribunal that the vehicle involved was not at all insured with the fourth respondent. The FIR, which has been marked as Ex.P1 would reveal that the same has been registered on the complaint of Karthik as against the deceased Satyaraj. However, the petitioners have not taken any steps to rectify the mistake in the FIR as claimed by the them to alter the FIR as



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to the fact that the same was driven by Karthik and not by Satyaraj. That apart from the evidences deposited by P.W.1 and P.W.2, the learned Tribunal concluded that there is no difference of opinion between the petitioners and the said Karthick. However, no witness has been examined on the side of the petitioners to substantiate the fact that the car which was involved in the accident was driven by Karthik not Satyaraj. Thereby, the learned Tribunal has dismissed the claim petition filed by the petitioners.

8.Challenging the same, the appellants/petitioners have filed this Civil Miscellaneous Appeal.

9.A critical perusal of the materials available in record would reveal that the learned Tribunal had concluded that the petitioners failed to prove their case that in the absence of any valid insurance policy and relying upon fact that the car was driven by Karthik and Satyaraj travelled with him. That apart the fourth respondent insurance company had marked Ex.R1 to Ex.R3, which would prove that the said vehicle involved in the accident was not insured with the fourth respondent.



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Accordingly, the fourth respondent Insurance company is not liable and exonerated from liability.

10. Based on the case reported in **2002(4) CTC 469**, the M.C.O.P. is altered as Workmen Compensation case, thereby, fixing the liability on the third respondent, who is the employer of the victim. In final, the impugned order of the learned Tribunal is set aside.

11. In terms of Section 4 of Workmen's Compensation Act, the loss of dependency is calculated as follows:-

Notional Income : Rs.3,000+215.28+50/100 =Rs3,22,920/-

12. The aforesaid compensation of Rs.3,22,920/- to be paid by the third respondent/employer. The third respondent/employer is directed to deposit the award amount with 12% interest from the date of the claim petition till the date of realization, within a period of 8 weeks from the date of receipt of copy of this order. On such deposit, the appellants/claimants are permitted to withdraw the award amount with proportionate interest after deducting any amount received by him earlier



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without filing any formal petition before the Tribunal. The appellants/claimants are not entitled for interest for the default period, if there is any.

13.In view of the above, the Civil Miscellaneous Appeal stands allowed. There shall be no order as to costs.

12.01.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes
Mrn

Note : Issue order copy on **10.06.2024**.



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L.VICTORIA GOWRI, J.

Mrn

To

- 1.The Motor Accidents Claims Tribunal,
Kulithalai.
- 2.The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.

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