



C.M.A(MD)No.518 of 2017

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **04.07.2024**

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.518 of 2017

1.Nagammal

2.Veerasley

3.Govindarajan

4.Vasanth

... Appellants/Claimants

Vs.

1.Saminathan

2.The Branch Manager,
United India Insurance Company Limited,
Pradeep Tower,
Manikoondy,
Pattukkottai,
Thanjavur District.

... Respondents/Respondents

*(R-1 was set ex parte before the Tribunal.
Hence, notice may be given up against R-1)*

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988 to set aside the judgment and decretal order made in M.C.O.P.No.297 of 2013, dated 16.03.2017 by the learned Motor Accident Claims Tribunal / III Additional District and Sessions



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Judge, Thanjavur at Pattukkottai and allow the appeal.

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For Appellants : Mr.S.Deenadhayalan

For R-1 : No appearance

For R-2 : Mr.A.Shajahan

JUDGMENT

The instant appeal has been filed by the claimants challenging the award passed in M.C.O.P.No.297 of 2013 on the file of the Motor Accident Claims Tribunal / III Additional District and Sessions Judge, Thanjavur at Pattukkottai, challenging the dismissal of the claim petition.

2. According to the claimants, the deceased, namely, Kaliyan was aged about 65 years and he was earning a sum of Rs.9,000/- per month. When he was walking on the road on 07.01.2012 at about 11.00 a.m., a Hero Honda Bike owned by the first respondent and insured with the second respondent came from the opposite direction in a rash and negligent manner and dashed against him. Due to the said impact, Kaliyan had passed away on 08.01.2012. The claimants have sought for a compensation of Rs.7,00,000/-.



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3. The Insurance Company has filed a counter contending that the vehicle was not insured with them and the driver of the vehicle was not having a valid driving license at the relevant point of time. They have further contended that this vehicle was not at all involved in the said accident.

4. The Tribunal after considering the evidence on record, arrived at a finding that, it is doubtful whether the vehicle of the first respondent was involved in the accident at all. Based upon the said findings, the claim petition was came to be dismissed. Challenging the same, the present appeal has been filed by the claimants.

5. According to the learned Counsel appearing for the claimants, the accident has taken place at 11.00 a.m., on 07.01.2012 and the FIR has been registered on 08.01.2012. He relied upon Exhibits P.1, P.2, P.4 and P.5 to contend that, these documents would establish the involvement of the vehicle belonging to the first respondent in the accident. Further he contended that the vehicle is insured with the second respondent and therefore, they are liable to pay the compensation.



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6. Per contra, the learned Counsel appearing for the Insurance Company had contended that, the involvement of the vehicle has not been established. The admission records of the deceased person have not been produced. He further contended that the first claimant has not entered into the box to depose in favour of the claimants. He further contended that the involvement of the vehicle has not been established by the claimants. Hence, he prayed for sustaining the award passed by the Tribunal.

7. I have carefully considered the submissions made on either side and perused the materials available on record.

8. A perusal of Exhibit P.1 FIR reveals that, it has been lodged by one Nagammal, who is the wife of the deceased person. The FIR has been lodged on 08.01.2012 at about 11.00 a.m. A perusal of the FIR reveals that, the vehicle number has not been mentioned. She has further mentioned in the FIR that, some un-identified persons have already removed the Motor Vehicle from the said place. Therefore, it is clear that Exhibit P.1 FIR is not in anyway helpful to the claimants to establish the involvement of the vehicle of the first respondent.



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9. Exhibit P.2 is the Post- Mortem Certificate which does not contain any information about the involvement of the vehicle. Exhibit P.4 is the Motor Vehicle Inspector's Report. It discloses that the vehicle was subjected to inspection only on 31.01.2012 after three weeks from the date of the accident. Exhibit P.5 is the charge-sheet, which has been filed as against one Kamaraj, who is said to be the driver of the vehicle. These documents do not inspire the confidence of the Court to the extent that the vehicle of the first respondent was involved in the accident. That apart, the Insurance Company has taken a specific stand in the counter that, the vehicle was not at all insured with them.

10. Time was granted by this Court on two occasions to the claimants to produce the copy of the insurance covering the period of accident. However, they were not successful in producing a copy of the insurance.

11. Since the involvement of the vehicle in the accident as well as the coverage of the policy have not been proved by the claimants, this Court does not find any merits in the appeal.



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WEB COPY 12. In fine, the Civil Miscellaneous Appeal stands dismissed.

There shall be no order as to costs.

04.07.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes
BTR

To

- 1.The Motor Accident Claims Tribunal /
III Additional District and Sessions Judge,
Thanjavur, Pattukkottai.
- 2.The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR, J.

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Judgment made in
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