

Viswasam and ors. Vs. E. Ramachandran Nadar and anr.

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Court : Chennai

Decided On : Sep-24-1971

Reported in : AIR1972Mad221

Judge : Maharajan, J.

Acts : Motor Vehicles Act - Sections 110-A

Appeal No. : A.A.O. No. 232 of 1970

Appellant : Viswasam and ors.

Respondent : E. Ramachandran Nadar and anr.

Judgement :

1. This is an appeal against the judgment of the Motor Accidents Claims Tribunal, Ramanathapuram (District Judge), dismissing the appellants' application under S. 110-A of the Motor Vehicles Act, for compensation of Rupees 10,000, in respect of the death of their mother, Savari Ammal, who sustained injuries in the course of a motor accident, which took place on 15-3-1967. at 11-30 p.m. at Sttur, as a result of whiich she died on 17-3-1967. According to the appellants, while the deceased Savari Ammal was going along the western side of the railway feeder road, Sattur in a northerly direction at about 11-30 p.m. on the date in question, a taxi bearing No. MDR 4696, belonging to the first respondent Ramachandran Nadar and insured with the second respondent, New India Insurance Co. Ltd., came in a southerly direction in a rash and negligent manner and knocked down Savari

Ammal, Respondent 1 and 2 in their counters denied that the car was driven in a rash or negligent manner and averred that the deceased, who was aged over 70 years, had contributed largely to the accident by darting into the middle of the road for collecting cowdung and falling in front of the car. They also contended that the compensation claimed was excessive.

The claims, Tribunal framed three points for determination. On the date to which the matter stood posted for hearing, the appellants' learned counsel, Sri G. R. Muniyandi happened to be absent, though the counsel for the respondents were present in court. The appellants, who are illiterate Harijans, requested the court to grant the an adjournment, but he court refused to grant the adjournment and proceeded to examine P. Ws. 1 and 2. It is not known how the examination-in-chief of P. Ws. 1 and 2 was conducted. Evidently, the Tribunal elicited from them such answers as it considered relevant. It is found from a certified copy of the application produced by the appellants' advocate that the appellants had prayed for summoning Dr. Sitalakshmi, Government Hospital, Wandiwash, who had treated Savari Ammal for here injuries and who had conducted autopsy on her body. They had also taken out summons to the Motor Vehicles Inspector. It is not known whether these two witnesses were present at the hearing in question. The Tribunal, without ascertaining whether these two witnesses were present or not, closed the evidence with P.W. 2 and proceeded to examine P. W. 1, on the side of the respondents. The deposition recorded by the Tribunal contains a note to the effect that after the evidence in chief of R.W. 1, was finished, the appellants were asked to cross-examine R.W.1, but they said that they could not do so in the absence of their counsel. Thereupon, the Tribunal proceeded to hear arguments and reserved judgment.

2. The judgment itself shows that Sri G. R. Muniyandi, Advocate for the appellants was absent and the arguments of he appellants were not heard. In paragraph 10 of its judgment, the Tribunal, after criticising the appellants for not having examined the Doctor who treated the injuries and the Doctor who conducted the autopsy, held that in the absence of medical evidence, it was not possible to say what were the injuries sustained by the deceased and whether death was due to these injuries. I think that the Tribunal has been uncharitable in refusing to give the

appellants an opportunity to conduct the case with the assistance of counsel. The appellants ought to have been given some time to bring their counsel or engage a fresh advocate. The criticism levelled by the Tribunal Against the appellant's non-examination of material witnesses is unjustified, because the appellants had taken steps to summon them. If the witnesses failed to respond to the summons issued by the Tribunal, steps ought to have been taken to enforce their attendance. The unholy haste with which the Tribunal proceeded to dispose of the case has resulted in miscarriage of justice.

3. I feel constrained therefore to set aside the judgment of the Tribunal below and remit the matter for fresh disposal in accordance with law after giving both the parties an opportunity to lead relevant evidence. Costs will abide the result.

4. Case remanded.

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