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C.M.A.No.879 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.04.2023

CORAM:

The HONOURABLE MRS.JUSTICE N.MALA

C.M.A.No.879 of 2020
and CMP.No.5609 of 2020

The Divisional Manager,
United India Insurance Co., Ltd.,
Divisional Office, Durgabhavani Square,
Opp.Railway Station,
Denkanikottai Road,
Hosur 635 109.

... Appellant

vs.

1.P.Veerasley
2.Haribabu

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and decree dated 04.06.2019 made in M.C.O.P.No.255 of 2018 on the file of the Motor Accident Claims Tribunal, (Additional District Judge) Hosur.

For Appellant : Mr.D.Bhaskaran

For R1 : M/s.Mukund R.Pandiyar

For R2 : No Appearance



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JUDGMENT

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The Civil Miscellaneous Appeal is filed to set aside the Decree and Judgment dated 04.06.2019 made in M.C.O.P.No.255 of 2018, on the file of the Motor Accident Claims Tribunal (Additional District Judge) Hosur.

2. The said appeal is filed by the Insurance company challenging the negligence as well as the quantum of compensation. The parties will be referred to as per their ranking in the claim petition. For the sake of convenience, the Appellant Insurance Company shall hereinafter be referred to as “ The Appellant” and the 1st Respondent who was the Claimant before the Claims Tribunal be referred to as the “ Claimant” and the 2nd respondent as 2nd respondent.

3. The claim petition was filed under Section 166 of the Motor Vehicles Act, claiming a sum of Rs.25,00,000/- as compensation. The claimant sustained injuries in a motor vehicle accident which occurred on 21.09.2015. As per the averments made in the claim petition, when the claimant was travelling as a pillion rider in Hero Splendor Plus motorcycle bearing Registration No.TN.70-H-5793 belonging to the second



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respondent on 21.09.2015, the motorcycle ridden by the 2nd respondent in a rash and negligent manner was hit by an unknown tempo vehicle. Consequently, the 2nd Respondent rider lost control of the motorcycle and both the Claimant and the 2nd Respondent fell down and sustained injuries.

4. According to the claimant, he was a street vendor and earning a sum of Rs.15,000/- per month by selling snacks on a push cart by the road side. He was maintaining his family with the sum thus earned. However, due to the accident he sustained injuries and suffered disability that impaired his work and earning capacity. Therefore, the claimant filed the claim petition claiming a sum of Rs.25,00,000/- as compensation for the injuries sustained by him in the motor accident.

5. The 2nd respondent remained *ex parte* before the Tribunal. The claim was contested by the appellant herein who filed a detailed counter disputing the nature of the accident, negligence, liability and quantum.

6. Before the Claims Tribunal, the claimant examined himself as



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PW1 and Exs.P1 to P10 were marked. On the other hand, on behalf of the appellant herein one witness was examined as R.W.1 and Exs.R1 to R5 were marked.

7. The Claims Tribunal, on perusal of pleadings and thorough Appraisal of the evidence adduced on record, awarded a sum of Rs.9,82,498/- as compensation along with interest at the rate of 7.5% p.a. to the claimant for the injuries sustained by him in the accident. Aggrieved by the award of the Tribunal, the above appeal has been filed by the Appellant insurance company.

8. The learned counsel for the Appellant submitted that the Claims Tribunal failed to adjudicate the maintainability of the claim petition. According to the learned counsel for the Appellant in the absence of any clear finding of negligence of the rider, the Tribunal ought not to have mulcted the liability on the appellant. In the absence of proof of negligence against the insured's driver the Tribunal ought to have rejected the claim petition as not maintainable under Section 166 of the Motor Vehicles Act, 1988.

9. The learned counsel further submitted that the averments



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made in the claim petition are contrary to the statement made in the F.I.R.

The learned counsel therefore contended that the Tribunal ought to have dismissed the claim petition at the threshold. According to the learned counsel for the Appellant, the Tribunal failed to note the fact that the claimant who was the father of the 2nd Respondent Rider was riding pillion in the motorcycle and the entire case of the claimant was a fraudulent one made with a view to obtain compensation from the Appellant. The Tribunal failed to note that the 2nd respondent remained *ex-parte* in the proceedings before the Tribunal and that the Claimant and the 2nd Respondent were hand in glove as they intended to mislead the Tribunal by concocting a fallacious story to fraudulently claim compensation. The learned counsel therefore prayed for dismissal of the claim petition.

10. The learned counsel for the Appellant further submitted that though the involvement of the first respondent's vehicle was not disputed, as per the F.I.R., another unknown vehicle, a Tempo van was also involved in the accident. Therefore, he contended that the claimant was entitled to claim compensation from the other vehicle.

11. According to the learned counsel for the Appellant, the



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accident was a 'hit' and 'Run' case and therefore the claimant was entitled to claim compensation from the Solatium Fund provided under the Act and he was not entitled to any compensation from the Appellant.

12. Heard the learned counsels for the appellant and the claimant and perused the material available on record .

13. The point for consideration before this Court is whether the claimant has established the negligence of the 2nd respondent (Rider) for maintaining the claim under Section 166 of the Motor vehicles Act, 1988. It is settled in law that negligence has to be clearly proved by the claimant through evidence to sustain a claim under Section 166 of the Motor Vehicles Act, 1988. In the absence of proper proof of negligence on the part of the 2nd respondent, the claimant would not be entitled to compensation as the liability to compensate the claimant is based on proof of fault under Section 166 of the Motor Vehicles Act, 1988. In this regard, the Judgment rendered by the Division Bench of this Hon'ble Court in *United India Insurance Company Limited, Chennai vs. D. Hemavathy*, reported in 2017 (2) TN MAC 115 (DB), was relied by the Appellant. In the said case, this Hon'ble Court held as follows:-



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"14. Reverting, in the case on hand, PW1, has not witnessed the accident. PW2, stated to have witnessed the accident, is not the complainant in Ex.P1, FIR in Cr.No.280/S2/2012 registered, by J-3, Guindy Traffic Investigation. Ex.P1-FIR has been registered on the complaint of RW2, D. Vasu, owner of the Motorcycle bearing Registration No. TN-07-BM-6368, who has categorically deposed that the accident occurred, due to the rash and negligent driving of the Driver of the Share Autorickshaw. RW1, Mr. Elango, Sub-Inspector of Police, Traffic Investigation (Admn.), has deposed that Ex.R2-Charge Sheet has been filed against the Driver of the Share autorickshaw.

15. When the Motorcyclist, RW2, himself has given a complaint, against the unknown Driver of the Share Autorickshaw, against whom, Ex.R2-Charge-sheet has been filed, the sole statement of PW2, Mr. R. Vinothkumar, alone to the effect that the accident occurred, due to the negligent act of both the Motorcyclist and Driver of the unknown Share autorickshaw, trying to proceed ahead of each other, cannot be the basis of arriving at a conclusion that the accident occurred, due to the negligence of the motorcyclist.

16. Testimony of RW2, Motorcyclist is corroborated by Ex.R1-FIR and Ex.R2-Charge-sheet and duly supported by the testimony of RW1, Sub-Inspector of Police, Traffic Investigation (Admn.,) FIR would be



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the first document produced by any claimant to prove that there was an accident. Inasmuch as FIR has been given by RW2, Motorcyclist, against the unknown Share Autorickshaw, it could be deduced that conveniently, the Claimants have failed to mark FIR.

17. Testimony of PW2, is not supported or corroborated by any evidence. There is no logic in the conclusion of the Tribunal that just because, the Motorcycle was new, there was every possibility to ride the same, in a rash and negligent manner and therefore, the accident would have occurred, due to the rash and negligent manner act, on the part of the Motorcyclist. Analyzing the evidence, in the light of the preponderance of probability, this Court is unable to subscribe to the contention of the Legal Representatives of the deceased that the Pillion Rider had not contributed to the accident and therefore, liability should be fastened on the Motorcyclist and its Insurer.

18. On the facts and circumstances of the case, we are of the view that the finding of the Tribunal, holding that the Motorcyclist had contributed to the accident, is perverse and warrants reversal and accordingly, the said finding is set aside. Consequently, the insurer of the Motorcycle, the Appellant Insurance Company, is not liable to pay compensation. The respondents are at liberty to pursue remedy, against the Share Autorickshaw and its Insurer.”

14. In the light of the above judgments, it is clear that the

Claimant has to establish negligence and rash driving on the part of the 2nd

respondent to sustain his claim. In the instant case the accident occurred



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on 21.09.2015 and the F.I.R. was belatedly registered on 23.09.2015 after a delay of two days by the 2nd respondent. The claim petition was filed belatedly after three years (i.e on 12.07.2018). In the FIR, it was stated that the 2nd respondent was the rider of the vehicle and the claimant was traveling as a pillion rider. The negligence as per the FIR for the occurrence of accident was attributed to an unknown lorry/Tempo. The FIR was closed as the unknown vehicle was not traceable. The claimant as PW1 in his cross examination stated that the FIR was registered against the driver of the Tempo van and that he filed the claim petition pleading the negligence on the driver of the Tempo van. PW1 further stated that he did not know how the accident happened and that the second respondent drove the vehicle cautiously. The relevant portion of the cross examination of PW1 is as follows: -

"புகாரில் பதிவு எண் தெரியாத டெம்போ ஓட்டுநர் மோதி விபத்து ஏற்பட்டதாக சொல்லியுள்ளார் என்றால் சரிதான். மனுவில் டெம்போ ஓட்டுநர் மோதி விபத்து ஏற்பட்டதாக போட்டுள்ளேன் என்றால் சரிதான். அலிபாபு கவனமாக ஓட்டினார். விபத்து எப்படி நடந்தது என்று எனக்கு தெரியாது."

15. The appellant on the other hand examined Grade I

Constable as RW1, through whom EX.R1 to Ex.R5 were marked. RW1 in her evidence stated that is the final report marked as Ex.R1, the charge



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sheet was closed as vehicle untraced. RW1 further stated that in the report nothing was stated about the negligence of the second respondent.

16. In the light of the evidence of PW1 and RW1 this Court finds merit in the submission of the Appellant that the Claimant failed to prove that the negligence of the 2nd Respondent resulted in the Accident.

17. The Tribunal has erred in awarding the Claimant a sum of Rs.9,82,498/- as compensation without proof of negligence which is important to sustain the claim under Section 166 of the Motor Vehicles Act, 1988. In the absence of proof of negligence of the 2nd Respondent in causing the accident, the liability of the Appellant to compensate the Claimant is legally untenable. Therefore, the claim of the Claimant under Section 166 of the Motor Vehicles Act, 1988, is liable to be rejected as devoid of merits.

18. In the light of the above, I am of the view that the claim petition is not maintainable and the present appeal deserves to be allowed.



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19. In pursuance to the order of this Court dated 09.03.2020, the Appellant deposited 50% of the award amount along with accrued interest to the credit of M.C.O.P No.255 of 2018 on the file of the Motor Accident Claims Tribunal, (Additional District Judge) Hosur. Since the Appellant has succeeded in the Appeal, it is permitted to withdraw the amount deposited to the credit of the said O.P. before the Tribunal by taking suitable steps in accordance with law.

20. Accordingly, this civil miscellaneous appeal stands allowed.
No costs. Consequently, the connected miscellaneous petition is closed.

26.04.2023

Index : Yes/No

Neutral Citation : Yes/No

kkd

To:

The Motor Accidents Claims Tribunal,
(Additional District Judge) Hosur.

N.MALA, J.

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