

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.09.2015

CORAM:

THE HONOURABLE MS.JUSTICE K.B.K.VASUKI

C.M.A.No.1722 of 2006
and
C.M.P.No.7555 of 2006

National Insurance Co. Ltd.,
Dharmapuri ...Appellant/2nd Respondent

Vs.

1. Murugan ...1st Respondent/Claimant

2. Yasodha ...2nd Respondent/1st Respondent

Prayer : This Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the award and decree dated 29.07.2005 made in M.C.O.P.No.2032 of 2003 on the file of the Motor Accidents Claims Tribunal, I Additional District Judge, Dharmapuri at Krishnagiri.

For Appellant : M/s.S.Arunkumar

For R-1 : M/s.V.R.Anna Gandhi

JUDGMENT

The second respondent-Insurer before the Tribunal is the appellant herein.

2. This Civil Miscellaneous Appeal is filed against the impugned award by denying the factum of accident and the factum of involvement in the accident of the vehicle bearing Reg.No.TN29F 2907 belonging to the first respondent, which was insured with the second respondent.

3. The learned counsel appearing for the appellant would cite the following reasons for denying the involvement of the vehicle in the accident.

(i) The type of vehicle was mentioned as share auto before the Doctor, who treated him for the injuries immediately after the accident and the same is entered so in Ex.P2-Accident

Register, whereas, the vehicle is mentioned as Mini Door Auto, which is the goods carrier in Ex.P1-FIR given by P.W.2-Saravanan who is none other than the son of the claimant injured, and it is mentioned in the claim petition and the proof affidavit as Bajaj three wheeler vehicle.

(ii) The complaint is given four days after the occurrence and the complainant, who is the son of the injured, has not given any reason for the delay in lodging the complaint; and

(iii) Ex.P4-Medical Bills produced before the Court are dated 25.12.2002 to 07.02.2003, whereas the accident occurred was on 24.07.2003.

4. The Tribunal negatived the denial raised on the side of the insurer and awarded compensation. Hence, this Civil Miscellaneous Appeal before this Court.

5. Heard both the learned counsel appearing for the appellant and the first respondent.

6. As rightly pointed out by the learned counsel for the appellant, the claimant has not come forward with any clear and definite case regarding the type of the vehicle involved in the accident. Though an argument is advanced herein that the claimant is an illiterate person and therefore, he was not able to mention the registration number and the correct type of the vehicle involved in the accident, the same is liable to be negatived. It is relevant to mention at this stage that the claimant has specifically stated before the Doctor that he was hit by share auto. The type of the vehicle is conveniently omitted in the claim petition as well as in the proof affidavit filed by P.W.1-injured. The different type of vehicle mentioned in FIR and omission to mention the type of the vehicle in the claim petition and in the proof affidavit cannot be lightly ignored and the same would lead to a serious doubt regarding the involvement of the vehicle insured with the second respondent in the accident. Had the claimant been genuine, he would not have produced medical bills relating to the period prior to the accident. There is absolutely no reasons to produce such bills. The only plausible explanation could be that the claimant attempted to somehow impress upon the Court to believe his case.

7. The Trial Court, without seriously taking note of the fact as stated above, simply accepted his case and awarded compensation. In my considered view, the claimant having not come to the Court with true case regarding the vehicle involved in the accident and he having not come to the Court with clean hands, the trial Court ought to have rejected his claim.

8. In the result, the civil miscellaneous appeal is allowed setting aside the award and decree dated 29.07.2005 made in M.C.O.P.No.2032 of 2003 on the file of the Motor Accidents Claims Tribunal, I Additional District Judge, Dharmapuri at Krishnagiri with permission given to the Appellant /Insurer to get refund of the amount already deposited before the Tribunal by filing separate cheque petition. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-II)

//True Copy//

Sub Assistant Registrar

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To

The Motor Accidents Claims Tribunal,
I Additional District Judge,
Dharmapuri at Krishnagiri.

1 CC to M/s.V.R.Anna Gandhi, Advocate SR.No. 48428

1 CC to M/s.S.Arunkumar, Advocate SR.No. 48166

C.M.A.No.1722 of 2006

KGK (CO)
PSI (30.10.2015)

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