IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.12.2016

CORAM:

THE HONOURABLE Mr.JUSTICE N.SESHASAYEE

CMA.No.1262 of 2007

Mariammal ...Appellant/Claimant

Vs.

1.G.Thirugnanasambandham

2.United India Insurance Co. Ltd.,
19/2A, Junction Main Road,
Salem - 4.

3.K.Chinnakannu .. Respondents/Respondents No.1,2&3

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 29.01.2007 in MCOP.No.668 of 2002 passed by the Motor Accident Claims Tribunal (Additional Subordinate Judge), Salem.

For Appellant : Mr.R.Nalliyappan
For Respondents: Mr.N.Vijayaraghavan [for R2]

JUDGMENT

1. The case of the claimant before the Tribunal was that on 12-10-2001 at about 7.00 a.m, while she was walking towards the milk society, a Hero Honda motorcycle driven by the 3rd respondent had hit her, owing to which she suffered injuries and had hence claimed Rs.1.0 lakh as compensation from its owner, the first respondent, and the insurance company. Suspecting the involvement of the motorcycle in the accident alleged, both the owner and the insurance company of the Hero Honda motorcycle had taken up a plea before the Tribunal that at the relevant time the third respondent was only riding an Enfield motorcycle and not the Hero Honda motorcycle as alleged. During enquiry, the insurance company had examined its investigator as R.W.1 while the first respondent, the owner of the motorcycle in question, examined himself as R.W.2, and according to them the Hero Honda motor cycle in question was handed over by the first respondent to his uncle Jagadeesan (R.W.3) who in turn had handed it over to one Elenchandran who was an insurance agent at Rasipuram, and it was he who substituted the Enfield motorcycle that was

involved in the accident with the borrowed Hero Honda motorcycle since the former did not have a valid insurance cover at the relevant time. This version was accepted by the Tribunal and it determined the compensation payable at Rs.35,000/- but fastened it solely on the third respondent and absolved the second respondent insurance company of any liability. Aggrieved by this the claimant has come forward with this appeal.

2. The learned counsel for the appellant submitted that all the testimonies based on which the Insurance Company contends that the Hero Honda Motor Cycle bearing Registration No.TN30-A-6493 was falsely brought in to sustain the claim of the claimant are self-serving testimonies. The foundation for the case of the Insurance Company is Ext. B-1, its internal investigation report, but this was not proved through its author Jawahar Babu, but only sought to be proved through an official of the insurance company who is incompetent to prove Ext.B-1. The testimonies of R.W.2 (that of the first respondent) and R.W.3 Jagadeesan (uncle of R.W.2) implicating one Elanchandran too are self serving and hence cannot be acted upon.

3. Per contra, the learned counsel for the respondents argued that the claim based on the involvement of the vehicle Registration No.TN30-A-6493 itself is falsely made and that the Insurance Company had taken steps to prefer a complaint with the CBCID and a copy of the same is made available on record as Ext.B-2. Further it has brought out in evidence that only a certain Enfield bullet belonging to the third respondent (before the Tribunal) was involved in the accident but since that vehicle did not have any insurance cover, the vehicle of the first respondent was implicated in the case with the sole objective of obtaining unmerited compensation for the victim.

4. The award amount is Rs.35,000/- to a lady aged 55 years. The accident itself had taken place way back in the year 2001, which is almost 15 years from today and the entire foundation for the case of the Insurance Company is pivoted on its contention that the involvement of the vehicle as indicated by the claimant is false, and it relies on the surveyor's report, whose author it did not examine, besides the oral evidence of R.W.2 and R.W.3. In my opinion, the evidence of both R.W.2 and R.W.3 (whose names find reference in the surveyor's report) are self-serving testimonies merely. It is hence there is a compelling need to examine an independent witness but inasmuch as none was so examined it is nigh difficult to rely on the self-serving testimonies of those two witnesses. What is pertinent here is that both R.W.2 and R.W.3 concede that the Hero Honda motorcycle in question was left with one Elango, the father of the third respondent, and if it were so, is there not a possibility that the 3rd respondent might have used it to cause an accident?

There is no clarity here as to the specific date on which Elango was handed over the Hero Honda motorcycle either. It may be that the Insurance Company had genuinely felt that the claim is a fake claim but preferring a mere complaint with the CBCID would not be adequate enough to prove its contention. On a total appraisal of the available evidence, I find it difficult to subscribe to the view of the Tribunal and consequently, the award to the extent it exonerates the insurance company needs to be interfered with.

5. In the result, the appeal is allowed with no costs and the respondents are directed to deposit the entire award amount with accrued interest within four weeks from the date of receipt of a copy of this order whereupon the claimant would be entitled to withdraw the same forthwith.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To:

The Additional Subordinate Judge,
(Motor Accident Claims Tribunal)
Salem.

+ 1 cc to Mr.RF. Nalliyappan, Advocate Sr.73962
+ 1 cc to Mr.N. Vijayaraghavan, Advocate Sr.74286

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Eu 14.03.17