

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.01.2016

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A.No.421 of 2009

United India Insurance Co.Ltd.,  
Motor Third Party Claims office  
III Floor  
No.38, Anna Salai  
Chennai-2

..Appellant/R2

-Vs-

1. K.Kandan
2. K.Thangakuppan

...Respondents/Claimant & R1

Memorandum of Grounds of Civil Miscellaneous Appeal under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 5.11.2007 made in M.C.O.P.No.220 of 2004 on the file of the Motor Accidents Claims Tribunal, Subordinate Judge, Ponneri.

For Appellant :: Mr.S.Arun Kumar

For Respondents :: No appearance for R1 & R2  
Mr.M.Maharaja  
Additional Public Prosecutor  
for Superintendent of Police  
CBCID, North Zone, Chennai

JUDGMENT

M/s United India Insurance Company Limited has brought this appeal challenging the correctness of the impugned award passed by the Motor Accidents Claims Tribunal, Subordinate Judge, Ponneri in M.C.O.P.No.220 of 2004 dated 5.11.2007 on serious grounds that the Tribunal has committed an apparent error in holding that the TVS Max 100R motorcycle bearing Registration No.TN-20-U-9472 was involved in the accident that took place on 25.1.2004 at about 9.00 p.m., when the first respondent/claimant was riding his bicycle towards east from Ennore-Kathivakkam bazaar to his house, in spite of the fact that the alleged accident was caused by another Bajaj Boxer motorcycle bearing

Registration No.TN-20-U-8041, which had no valid insurance on the alleged date of accident.

2. Mr.S.Arunkumar, learned counsel for the appellant-Insurance company submitted that it is not in dispute that the accident had occurred on 25.1.2004 at about 9.00 p.m., involving the first respondent/claimant, who was riding his bicycle towards east from Ennore-Kathivakkam bazaar to his house. At this point of time, a Bajaj Boxer motorcycle bearing Registration No.TN-20-U-8041 alone, rashly and negligently driven towards west by the rider, hit the cyclist, namely, the first respondent/claimant, as a result of which he suffered fracture and grievous injuries. Whereas the first respondent/claimant, noting that the said Bajaj Boxer motorcycle bearing Registration No.TN-20-U-8041 was not having any insurance coverage with the appellant, had wrongly and deceitfully introduced another TVS Max 100R motorcycle bearing Registration No.TN-20-U-9472 as though the said motorcycle alone was involved in the accident, as referred to in the claim petition. In any event, when the claim petition was filed, after filing of the usual counter affidavit by the appellant, a detailed counter affidavit was filed bringing out the fact that the investigation revealed that there were two First Information Reports mentioning the registration numbers of two motorcycles in respect of the same accident, because, after making a thorough investigation, the appellant took up the matter with the higher police officials stating that the Bajaj Boxer motorcycle bearing Registration No.TN-20-U-8041 alone was involved in the accident and that the first respondent/claimant had shown another TVS Max 100R motorcycle bearing Registration No.TN-20-U-9472 in order to claim wrongful compensation from the insurance company. On this basis the appellant had taken a specific ground that they are not liable to pay any compensation amount to the first respondent/claimant. Subsequently, even during the pendency of the claim petition, when the information about the two First Information Reports filed by the claimant were brought to the notice of the Tribunal, in all fairness, he contended that the Tribunal ought to have drawn an adverse inference as to the fact of introduction of TVS Max 100R motorcycle bearing Registration No.TN-20-U-9472 in the accident, since the Bajaj Boxer Motorcycle bearing Registration No.TN-20-U-8041 had no valid insurance on the date of the accident. Secondly, the Tribunal ought to have dismissed the claim petition for the simple reason that the claimant has not approached the Tribunal with clean hands. Even in spite of the additional counter affidavit filed by the appellant bringing to the notice of the Tribunal clearly and categorically that at no point of time the TVS Max 100R motorcycle bearing Registration No.TN-20-U-9472 had been involved in the accident, the Tribunal failed to consider the said aspect. On the other hand, the Tribunal, without properly dealing with the evidence of R.W.1

and Ex.R1, wrongly came to an erroneous conclusion to order the claim petition, that too accepting the wrong claim of the claimant that the Bajaj Boxer Motorcycle bearing Registration No.TN-20-U-8041 had not been involved in the accident and that only the TVS Max 100R motorcycle bearing Registration No.TN-20-U-9472 had been involved in the accident that took place on 25.1.2004 at 9.00 p.m., which was subsequently introduced for the purpose of claim.

3. Adding further, Mr.S.Arunkumar, placing on record the report filed by the Superintendent of Police, CB CID, North Zone, Chennai, has heavily contended that whatever the insurance company pleaded in their additional counter affidavit filed before the Tribunal have come out true in the report filed by the Superintendent of Police, for the simple reason that the Superintendent of Police, CB CID, North Zone, Chennai had made it clear that after completion of investigation in Chennai CCB Crime No.700 of 2005, a final report under Section 173(2) of Cr.P.C., against A1-Mr.Kandan, A2-Mr.Jeevanatham and A3-Mr.Veerannan for the offence punishable under Sections 120-B, 465, 471 read with 34, 465 read with 420, 471 read with 465, 468 read with 109 and 167 of IPC was filed before the learned XI Metropolitan Magistrate, Saidapet, Chennai on 25.11.2015. Therefore, if the report filed by the Superintendent of Police is considered by this Court as the true happening, which has been completely concealed by the claimant before the Tribunal, the entire award passed by the Tribunal awarding a sum of Rs.1,41,000/- with interest at the rate of 7.5% per annum from 7.6.2004 to 5.11.2007 to the claimant is liable to be set aside with exemplary costs for the huge loss of time caused not only to the insurance company, but also to the police department and above all, for wasting the valuable and precious time of this Court as well as the Tribunal. Finally he submitted that in view of the report filed by the Superintendent of Police, North Zone, Chennai, the award is liable to be set aside so as to save the public money.

4. None appeared on behalf of the respondents.

5. Mr.M.Maharaja, learned Additional Public Prosecutor appearing for the Superintendent of Police, CB CID, North Zone, Chennai, placing on record a copy of the final report filed before the learned XI Metropolitan Magistrate Court, Saidapet, Chennai, has read through the relevant portions of the final report to show that the claimant had really played a fraud not only with the Court but also with the insurance company for getting the money through an award, as a result an investigation had to be ordered on the complaint made by the insurance company. In view of the serious complaint made by the insurance company, the appellant herein, taking note of its magnitude, the enquiry was entrusted with the CB CID, North Zone, Chennai,

because the complainant Mr.Srinivasan, Deputy Manager, United India Insurance Company Limited had sent the complaint by registered post with enclosures alleging that two identical First Information Reports had been registered in H1-Ennore Police Station Crime No.23 of 2004 under Sections 279 & 338 IPC dated 26.1.2004 in respect of the road accident that occurred on 25.1.2004, wherein one Kandan, the cyclist had sustained grievous injuries when hit by a motorcycle, in one FIR citing the driver of the motorcycle No.TN-20-U-8041 Bajaj Boxer as accused and in another FIR citing the driver of the motorcycle No.TN-20-U-9472 as accused with a motive to defraud the public sector insurance company, namely, the appellant herein. Therefore, based on the complaint, a case in CCB Crime No.700 of 2005 under Section 420 IPC was registered on 21.9.2005 and subsequently the same was thoroughly investigated. Again as per the order passed by this Court in W.P.No.7389 of 2005 dated 22.12.2009, the case was transferred as mentioned above to CB CID and as per the instructions of the ADGP, CB CID, Chennai issued in C.No.C6/6377/2010 dated 27.2.2010, further investigation was taken up by the Inspector of Police, Metro Wing, CB CID, Chennai on 15.3.2010. In the light of the investigation, it was revealed that the case in H1-Ennore Police Station Crime No.23 of 2004 under Sections 279 & 338 IPC was registered by the Special Sub Inspector of Police, V.Veerannan on 26.1.2004 based on the statement recorded from Kandan-injured against the driver of the motorcycle bearing Registration No.TN-20-U-8041 Bajaj Boxer in respect of the accident that occurred on 25.1.2004. The said Special Sub Inspector of Police Mr.Veerannan had also arrested Mr.Jeevananthan, driver of the two-wheeler TN-20-U-8041 Bajaj Boxer on 9.2.2004 for having caused the accident and subsequently he was released on bail. However, on the very same day-9.2.2004, the Special Sub Inspector of Police Mr.Veerannan subjected the vehicle TN-20-U-8041 Bajaj Boxer actually involved in the accident for inspection of the witness-Mr.Govindasamy, Motor Vehicle Inspector Grade II, Redhills unit, Chennai. Thereafter the said Kandan came to know that the motorcycle TN-20-U-8041 Bajaj Boxer did not have a valid insurance policy at the time of accident. Knowing well that he could not claim any compensation from the insurance company, the said Kandan-injured dishonestly, with an intention to cause wrongful gain to himself and wrongful loss to the insurance company, entered into a conspiracy with A2-Jeevanandam and A-3-Veerannan and gave a false statement to A3 identical to that of previous one, falsely implicating the two wheeler TN-20-U-9472 TVS Max 100R having a valid insurance policy at the time of accident that was owned by one Thangakuppan-deceased, the father of A2-Jeevanandam in the place of the actual two wheeler TN-20-U-8041 Bajaj Boxer that was involved in the accident. Therefore, for the reason that A1 to A3 have committed the said offence of forgery for the purpose of cheating the officers and the Court and thus rendered

themselves punishable under Section 468 IPC and also further prepared the false First Information Report in Crime No.23 of 2004 as if the two wheeler TN-20-U-9472 had been involved in the accident which was having insurance policy on the date of occurrence on 25.1.2004, it goes without saying that the injured Mr.Kandan, knowing pretty well that the Bajaj Boxer two wheeler TN-20-U-8041 was not covered under the insurance policy, had fraudulently and dishonestly obtained a wrongful gain from the Tribunal. Adding further, the learned Additional Public Prosecutor submitted that since the final report has been taken on file on 26.11.2015 by the learned XI Metropolitan Magistrate, Saidapet, Chennai, the charges are also framed on 20.1.2016 and the next date of hearing has been fixed on 16.3.2016 for production of the witnesses in C.C.No.5296 of 2015, if the parties come forward to cooperate, in all fairness, the matter could be expeditiously disposed of.

6. This Court, taking into account the fact that a final report has been filed under Section 173(2) Cr.P.C., against the accused for the offence punishable under Sections 120-B, 465, 471 read with 34, 465 read with 420, 471 read with 465, 468 read with 109 & 167 of IPC before the learned XI Metropolitan Magistrate, Saidapet, Chennai, is of the considered view that the Tribunal has miserably failed to consider the evidence adduced by the appellant before passing the impugned award. Yet another interesting aspect that needs to be mentioned herein is that when the matter was listed before this Court on 17.12.2015, the counsel appearing for the owner of the two wheeler also appeared on the said date and sought time to argue the matter. This Court also, accepting the request, as he is one of the parties, granted adjournment. But subsequently, when the matter was listed on more than seven occasions i.e., on 18.12.2015, 21.12.2015, 22.12.2015, 6.1.2016, 8.1.2016, 11.1.2016 & 18.1.2016, in none of the hearings he appeared. That also shows that he is not having any case of defence. Therefore, this Court has no other option except to accept the case of the appellant-insurance company that the accident was caused by the rider of the Bajaj Boxer bearing Registration No.TN-20-U-8041 on 25.1.2004 and not as projected by the claimant. But unfortunately, although a First Information Report was registered in H1-Ennore Police Station Crime No.23 of 2004 under Sections 279 & 338 of IPC by the Special Sub Inspector of Police Mr.V.Veerannan on 26.1.2004 based on the statement recorded from Mr.Kandan-injured against the driver of the Bajaj Boxer motorcycle bearing Registration No.TN-20-U-8041, subsequently knowing that the said motorcycle involved in the accident did not have a valid insurance policy at the time of accident, has deceitfully and illegally replaced the said motorcycle with another TVS Max 100R motorcycle bearing Registration No.TN-20-U-9472. This fact was rightly brought to the notice of the Tribunal. But for the reasons best known to the Tribunal, that

aspect has been completely overlooked. Therefore, this Court has no other option except to set aside the impugned award. Accordingly, the impugned award is set aside and the civil miscellaneous appeal is allowed. Needless to mention that the appellant-insurance company is permitted to withdraw the entire amount already deposited by them to the credit of the M.C.O.P.No.220 of 2004 on the file of the Motor Accidents Claims Tribunal, Subordinate Judge, Ponneri with interest thereon by moving appropriate application by the Tribunal. This Court also places on record the valuable assistance rendered by Mr.M.Maharaja, learned Additional Public Prosecutor appearing for the Superintendent of Police, CB CID, North Zone, Chennai, in the absence of the contesting respondents, for disposal of this matter and hence the appellant insurance company is directed to pay a sum of Rs.25,000/- (Rupees twenty five thousand only) to him for assisting the Court. Further, for the reasons that the first respondent/claimant had manipulated the claim from day one and also played a fraud for obtaining a wrongful gain from the Tribunal through the process of insurance company and finally for wasting the precious and valuable time of this Court, which could have been spent on other serious issues, this Court is constrained to impose an exemplary cost of Rs.50,000/- (Rupees fifty thousand only) on the first respondent/claimant, which shall be paid to the Tamil Nadu Mediation and Conciliation Centre, High Court, Madras within a period of six weeks from the date of receipt of a copy of this order. Consequently, M.P.No.1 of 2009 is closed.

ss

Sd/-

Asst.Registrar

/true copy/

Sub Asst. Registrar

To

1. The Motor Accidents Claims Tribunal,  
Subordinate Judge, Ponneri.
2. The Secretary, Tamil Nadu Mediation and  
Conciliation Centre, High Court, Mds.

COPY TO:- The Section Officer, V.R.Sec. High Court, Mds.

- + 1 cc to Mr.S.Arun Kumar, Advocate Sr 3635
- + 1 cc to Public Prosecutor, High Court, Mds. Sr 3708

KR/29/3/16

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