



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.10.2016

CORAM :

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

CMA(MD)No.1013 of 2016

Selvan

... Appellant/Petitioner

vs.

1)Pandurengan @ Hariharan
2)Varadharajan
3)M/s.TATA AIG General Insurance Co., Ltd.,
Peninsula Corporate Park,
Nicholas Piramal Tower,
9th Floor, Ganpatrao,
Lower Parel, Mumbai-400013,
Rep through its Agent/Broker,
V.S.Kalyana Sundaram Auto Agency, Agasteeswaram Taluk,
Nagercoil,
Kanyakumari District.

4)The Branch Manager,
United India Insurance Company Ltd.,
Nagercoil Village,
Agasteeswaram Taluk,
Kanyakumari District.

5)The Branch Manager,
National Insurance Company Ltd.,
Nagercoil Village,
Agasteeswaram Taluk,
Kanyakumari District.

... Respondents/Respondents

(No notice to respondents 3 and 4 are necessary
since no relief is claimed and no decree is passed
against them by the Tribunal)

Appeal filed under Section 173 of the Motor Vehicles Act,
1988, against the judgment and decree dated 19.02.2016 passed in
M.C.O.P.No.4 of 2015 on the file of the Motor Accident Claims
Tribunal (Before the Special Court for Forest Offence Cases),
Nagercoil.



JUDGMENT

The appellant met with the road accident on 22.10.2014 and sustained injuries. Accordingly, he filed a claim petition in MCOP.No.4 of 2015 before the Motor Accident Claims Tribunal (Special Court for Forest Offence Cases), Nagercoil, against the respondents and no relief was sought for against the respondents 3 and 4 and no relief was also granted against them. The claim petition in MCOP.No.4 of 2015 was dismissed by the Motor Accident Claims Tribunal, Nagercoil, by judgment dated 19.02.2016, against which, the present appeal is preferred by the appellant.

2.The main grounds raised by the appellant is that the evidence of PW1 is corroborating with the evidence of PW3 and further, the appellant sustained injuries in a road accident involving the motor vehicle driven by the 1st respondent which was insured with the 5th respondent National Insurance Company Ltd. Though FIR is not registered regarding the accident, the claim of the appellant is to be maintained.

3.The counsel for the 5th respondent contended that there are discrepancies between the evidence of PW2 and Ex.P1 and further, the appellant failed to prove the factum of the very accident and therefore, not entitled for any compensation. Further, the learned counsel states that the deposition given by the Doctor/PW2 cannot be relied upon and such an evidence given by the Doctor cannot be a proof for the factum of accident. When the very accident itself has not been established by the appellant before the Tribunal, the other evidences adduced by him cannot be relied upon. In the absence of establishing the factum regarding the accident, no claim petition is maintainable and the appellant is not entitled for any compensation under the Motor Vehicles Act.

4.The counsel for the 5th respondent in support of his arguments, has relied upon a judgment of the Hon'ble Supreme Court in Reshma Kumari and others vs. Madan Mohan and another, reported in (2013) 9 SCC 65, and contended that the claim petition is filed under Section 166 of the Motor Vehicles Act and not under Section 163-A. In the event of filing the claim petition under Section 166, it is mandatory on the part of the claimant to prove the negligence on the part of the driver or owner of the vehicle. In other words, the burden of proof solely lies on the claimant and not on the insurance company.

5.Heard both sides.

6.The abovesaid Full Bench judgement of the Hon'ble Supreme Court laid down the precedent in paragraph 13.4, which is extracted hereunder:-

<https://hcservices.ecourts.gov.in/hcservices/>

13.4. On the other hand, by making an application for compensation arising out of an accident under Section 166



it is necessary for a claimant to prove negligence on the part of the driver or owner of the vehicle. The burden is on the claimant to establish the negligence on the part of the driver or owner of the vehicle and on proof thereof, the claimant is entitled to compensation.''

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7. Considering the arguments advanced by the learned counsels for the petitioner and the 5th respondent, this Court is of the view that the Tribunal in its order categorically found that the complaint alleged to have been given by the appellant in the police station had not been registered and the appellant was very much aware of that fact. In spite of such non registration, the appellant had not initiated any further appropriate action. Further, the driver who was examined, also deposed that he was not driving the particular vehicle on the date of accident and he was not even possessing any driving licence and therefore, the Tribunal came to the conclusion that no such accident took place and the appellant had not established the same beyond the reasonable doubt. Further, the Tribunal based on the deposition of the witnesses, found that PW3 is the brother of PW1, who is the claimant and the testimony of such interested witness cannot be considered, unless the deposition corroborates by other evidences or documents regarding the factum of the accident. In the absence of any evidence regarding the occurrence of accident, the evidence given by PW3 cannot be relied upon. The finding arrived at by the Motor Accident Claims Tribunal, Nagercoil, based on the evidence and the documents produced, is well founded and sound in accordance with the established principles and the principles laid down by the Hon'ble Apex Court and therefore, there is no error in the finding of the Tribunal and the grounds raised by the appellant deserve no consideration and accordingly, this Civil Miscellaneous Appeal is dismissed. No costs.

Sd/-

Assistant Registrar(CS I)

/True copy/

Sub Assistant Registrar

To
The Judge,
Motor Accident Claims Tribunal
(Special Court for Forest Offence Cases), Nagercoil.

+1cc to MR.D.Sivaraman, Advocate Sr.No.62771
+1cc to Mr.M.Suri, Advocate SR.No.61848

nbi

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