

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 11.08.2017

PRONOUNCED ON : 06.09.2017

CORAM

THE HON'BLE MR. JUSTICE R.SUBBIAH

and

THE HON'BLE MR. JUSTICE A.D.JAGADISH CHANDIRA

C.M.A.No.2770 of 2015

Sivaraman

..Appellant/Claimant

..vs..

1. Sri Kalyanasundaram

2. The Branch Manager,
The New India Assurance Co. Ltd.
Cuddalore - 1.

..Respondents/Respondents

Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, against the judgment and decree dated 10.08.2011 passed by the Motor Accidents Claims Tribunal, Chief Judicial Magistrate, Cuddalore in MCOP.No.2782 of 2006.

For Appellant : Mr.R.Muralidharan

For R2 : Mr.M.Krishnamoorthy

JUDGMENT

R. SUBBIAH, J.

The claimant is the appellant herein. He has come forward with the present appeal challenging the award dated 10.08.2011 passed by the learned Motor Accident Claims Tribunal, Chief Judicial Magistrate, Cuddalore in M.C.O.P.No.2782 of 2006, dismissing the claim petition filed by him.

2.It is the case of the appellant before the Tribunal that on 20.03.2005, he was hit by an unknown vehicle and immediately, he became unconscious. Subsequently, the Inspector of Police, Kullanchavadi informed about the accident to one Sivasankar, who is the cousin of the appellant herein. The said Sivasankar came to the spot and enquired the owner of the weigh bridge, where the accident took place and found the vehicle number involved in the accident and informed the same to the police. However, the police did not take any action and they referred the case as Mistake of Fact. Thereafter, the said Sivasankar

filed a petition under Section 173(8)Cr.P.C before the learned Judicial Magistrate No.III, Cuddalore, who, in turn, directed the Deputy Superintendent of Police, Neyveli to conduct further enquiry. According to the appellant herein, the accident had occurred due to the rash and negligent driving of the driver of a Tata Sumo Car bearing Regn.No.TN51-U-9717 belonging to the first respondent herein and insured with the second respondent herein. Hence, the appellant has made a claim of Rs.16,00,000/- as compensation, against the owner as well as the insurer of the vehicle.

3.The first respondent, who is the owner of the vehicle, remained exparte before the Tribunal.

4.The second respondent Insurance company resisted the claim made by the appellant herein, by filing a detailed counter stating that the vehicle bearing Regn.No.TN51-U-9717 was not involved in the accident. It is further stated therein that based on the complaint given by the said Sivasankar, who is the close relative of the appellant herein, stating that the number of the offending vehicle started with PY 01 W, following which, the police registered a case and after investigation, filed a referred charge sheet. It is also stated in the said counter that after the learned Judicial Magistrate No.III, Cuddalore, passed an order, directing the police to conduct reinvestigation, the appellant and his family members have given the vehicle number of the first respondent as the offending vehicle, for the first time. According to the second respondent Insurance Company, as the vehicle of the first respondent was hired by Comal Plant Company of Mayiladuthurai at the relevant point of time, it was not involved in the accident. The appellant has made the claim for compensation by falsely implicating the vehicle of the first respondent as the offending vehicle and hence, the second respondent Insurance Company is not liable to pay compensation to the appellant herein.

5.In order to prove the claim made by the appellant / claimant, he examined himself as P.W.1, besides examining one Sekar, who was working in the weigh bridge situated near the occurrence place, as P.W.2 and Dr.Vijaya Anandh Thambaiah, who examined the appellant herein, as P.W.3 and Exs.P1 to P21 documents were marked. On the side of the second respondent Insurance Company, one Mohan, who is the Investigating Officer, was examined as R.W.1 and his Investigating Report was marked as Ex.R1.

6.The Tribunal, after analysing the entire evidence let in by the parties, came to the conclusion that the vehicle insured with the second respondent Insurance company was not involved in the accident as alleged by the appellant / claimant. Accordingly, the Tribunal dismissed the claim petition filed by

the appellant / claimant. Hence, this appeal by the claimant.

7.Learned counsel for the appellant has made the following submissions:

7.1 Immediately after the accident, the cousin of the appellant herein viz., Sivasankar came to the spot and found the vehicle number involved in the accident by enquiring the owner of the weigh bridge, where the accident took place and reported the same to the police. In support of his contention, learned counsel relied on the evidence of P.W.2, who was working in the weigh bridge at the time of accident, to the effect that immediately after the accident, P.W.2 rushed to the spot and saw the Tata Sumo Car bearing Regn.No.TN51-U-9717 standing at that place. However, the Tribunal without considering the evidence of P.W.2 in proper perspective, rejected the claim petition filed by the appellant herein, on the ground that the vehicle bearing Regn.No.TN51-U-9717 was not involved in the accident.

7.2 On the side of the second respondent Insurance company, except R.W.1 Investigating Officer, no independent witness was examined to contravene the case put forth by the appellant.

7.3 The first respondent herein, who is the owner of the vehicle, has not chosen to appear before the Tribunal and contest the case, for the reasons best known to him. Under such circumstances, the Tribunal, by accepting the evidence adduced by the appellant / claimant, ought to have awarded compensation to the appellant herein for the injuries sustained by him, by holding that the accident occurred only due to the rash and negligent driving of the driver of the Tata Sumo Car bearing Regn.No.TN51-U-9717 insured with the second respondent Insurance Company.

8.Per contra, learned counsel for the second respondent Insurance Company submitted that as per the evidence of P.W.2, he reached the place of occurrence after the accident, as such, there is no possibility for him to eye witness the accident. Learned counsel further submitted that the case of the appellant that his cousin Sivasankar came to the accident spot and enquired the weigh bridge owner and found the vehicle number involved in the accident, whereas, in Ex.P1 - FIR, it has been stated by the said Sivasankar that the registration number of the vehicle involved in the accident was not known to him. Learned counsel also submitted that with regard to the accident that had occurred on 20.03.2005, the wife of the appellant has lodged a complaint to the Deputy Superintendent of Police, Cuddalore District, which was marked as Ex.P.4, stating that one Muthupillai and his wife Kasthuri, due to family dispute, have attempted to murder her husband by causing an accident. It is further stated therein that after the accident, they approached the RTO, Pondicherry and obtained a list of White Tata Sumo Cars having serial number PY-01W and thereafter, identified the

offending vehicle number as TN51-U-9717 at VST Tata Sumo Service Station, Cuddalore, which goes to show that the appellant has impleaded the vehicle bearing Regn.No.TN51-U-9717 only for the purpose of claiming compensation. Therefore, the Tribunal has rightly dismissed the claim petition, which warrants no interference by this Court.

9.Keeping the submissions made by the learned counsel on either side, we have carefully perused the materials placed before us.

10.It is not in dispute that the appellant sustained injuries in an accident that had occurred on 20.03.2005 near Kullanchavady weigh bridge. What was disputed by the second respondent Insurance company is the involvement of the vehicle bearing Registration No.TN51-U-9717 belonging to the first respondent herein and insured with them in the said accident.

11.According to the appellant / claimant, immediately after the accident, he became unconscious and on information, his cousin Sivasankar came to the accident spot and enquired the weigh bridge owner and got the registration number of the vehicle, which caused the accident, as TN51-U-9717 belonging to the first respondent herein and insured with the second respondent herein, whereas, the same is denied by the second respondent Insurance Company by relying on the evidence of Ex.P1 -FIR and Ex.P4 complaint.

12.On a perusal of Ex.P1-FIR, it could be seen that the same was registered based on the complaint given by the cousin of the appellant viz., Sivasankar, informing that the vehicle that caused the accident, was a Tata Sumo Car and the registration number of the same was not known. Similarly, Ex.P4 complaint would reveal that it was lodged by the wife of the appellant to the Deputy Superintendent of Police, Cuddalore, after three months from the date of accident, which proceeds to state that one Muthupillai and his wife Kasthuri have made an attempt to murder her husband by causing the accident. It further proceeds to state that the relatives of the appellant have taken steps to trace the vehicle number involved in the accident, starting with PY-01W and they ultimately, got the offending vehicle number as TN51-U-9717 belonging to the first respondent herein and insured with the second respondent herein. Thus, we are of the opinion that the appellant has not taken a consistent statement by producing cogent and satisfactory evidence.

13.At this juncture, it is relevant to look into the evidence adduced on the side of the second respondent Insurance company. To deny the claim made by the appellant/ claimant, they have examined the Investigating Officer as RW1 and marked his

Investigation report as Ex.R1, which contains many documents, one of which is the Trip sheet pertaining to the vehicle bearing Registration No.TN51 U 9717, for the period from 08.03.2005 to 21.03.2005, as sl.no.22. The reading of the trip sheets would go to show that during the relevant point of time, the vehicle was running for one Comal Industries at Mayiladuthurai on contract basis. Even on the date of occurrence i.e., 20.03.2005, the said vehicle was plying only at Mayiladuthurai, whereas the accident had occurred at Kullanchavady, Cuddalore. Therefore, we are of the view that the vehicle belonging to the first respondent herein and insured with the second respondent herein was not at all involved in the accident, in which, the appellant sustained injuries, as held by the Tribunal.

14.For the reasons stated above, we do not find any infirmity or irregularity in the award passed by the Tribunal in dismissing the claim petition filed by the appellant herein. Further, we do not have any compelling circumstances warranting to interfere with the same.

15.In the result, the Civil Miscellaneous Appeal is dismissed. No costs.

s/d-
Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

rk

Copy to

1. The Chief Judicial Magistrate/
Motor Accidents Claims Tribunal,
Cuddalore.

+1 CC to Mr.R. Muralidharan, Advocate sr 64847.

+1 CC to Mr.M. Krishnamoorthy, advocate sr 64405.

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KGK(CO)
sp(27/10/2017)