

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.02.2017

CORAM:

THE HONOURABLE Dr. JUSTICE S.VIMALA

C.M.A.Nos.622 and 623 of 2017
and C.M.P.Nos.3606 and 3607 of 2017

C.M.A.No.622 of 2017

The Divisional Manager,
 National Insurance Co. Ltd.,
 J.N.Street, Pondicherry.

... Appellant/2nd respondent

versus

1. Arul
2. S.Santhi

... 1st respondent/Petitioner
 ... 2nd respondent/1st
 respondent

(R2 remained ex parte before
 the Tribunal)

Appeal filed under Section 173 of Motor Vehicles Act 1989, against the
 Judgment and Decree dated 27.12.2007 made in M.A.C.T.O.P.No.12 of 2007 on
 the file of the Motor Accident Claims Tribunal (Fast Track Court-II), Tindivanam.

C.M.A.No.623 of 2017

The Divisional Manager,
 National Insurance Co. Ltd.,
 J.N.Street, Pondicherry.

... Appellant/2nd respondent

versus

1. Kumar
2. S.Santhi

... 1st respondent/Petitioner
 ... 2nd respondent/1st
 respondent

<http://www.judis.nic.in> (R2 remained ex parte before
 the Tribunal)

Appeal filed under Section 173 of Motor Vehicles Act 1989, against the Judgment and Decree dated 27.12.2007 made in M.A.C.T.O.P.No.126 of 2007 on the file of the Motor Accident Claims Tribunal (Fast Track Court-II), Tindivanam.

For Appellant in
both C.M.As. : M/s.M.Krishnamoorthy

For R1 : No such address

COMMON JUDGMENT

In the accident that took place on 15.01.2004 at about 7.00 p.m. one Arul and Kumar, the 1st respondent in the respective appeals, sustained injuries. Therefore, claim petition in M.C.O.P.Nos.12 and 126 of 2007 were filed before the Motor Accident Claims Tribunal (Fast Track Court-II) Tindivanam, claiming compensation of Rs.10,00,000/- and Rs.3,00,000/- respectively.

2. As against the claim made, the Tribunal has passed an award for Rs.76,000/- and Rs.10,000/- respectively. Challenging the said award as excessive, the Insurance Company has filed these appeals.

3. The learned counsel appearing for the Insurance Company submits that the claim petition ought to have been dismissed by the Tribunal as the vehicle, bearing Regn. No.TN32Y 0477, owned by the second respondent duly insured with the appellant was not involved in the accident. It is further submitted that though the accident had occurred on 15.01.2004, the complaint was lodged belatedly on 04.03.2004 and no reason was given by the claimants for the inordinate delay in lodging the complaint, which creates a suspicion

regarding the occurrence. It is further submitted that as no independent eye witness was examined, the claim petition ought to have been dismissed by the Tribunal. The Tribunal has erred in not properly appreciating the evidence of RW1-investigator and Ex.B1-Investigation Report that proved the insured car was falsely implicated. As the insured car was not involved in the accident, the liability to pay compensation does not arise. Therefore, the award is unsustainable.

4. In order to appreciate these contentions, it is necessary to look into the award passed by the Tribunal.

5. A perusal of the award reveals that the petitioners/claimants examined themselves as P.W.1 and P.W.2, wherein, they have deposed that the accident had occurred due to rash and negligent driving of the first respondent's Ambassador Car bearing Reg.No.TN32Y 047 and on the side of the injured, accident register has been filed to prove the same.

6. It is the contention of the learned counsel for the appellant that the complaint has been lodged by the petitioners belatedly. It is relevant to point out that the injured persons, immediately after the accident, had been admitted to the hospital from 15.01.2004 to 19.02.2004. Further, they had taken treatment at private hospital. Therefore, it would have taken some time for the claimants to file complaint. Therefore, the delay in filing the complaint cannot be put against them in the absence of other evidence to support the case of the insurance company that the claim is a bogus claim.

7. Insofar as the contention relating to examination of independent eye witness, it is pertinent to point out that the injured persons are the best witnesses to narrate the accident, which had occurred due to the rash and negligent driving of the offending vehicle. There is no necessity to examine any other eye witness to the accident. Therefore, the non-examination of eye witness cannot be put against the claimants. If the insurance company disputes the accident, it is for the insurance company to examine witnesses to contradict the testimony of the claimants.

8. Even though it is the contention of the learned counsel for the appellant Insurance Company that the alleged car, which was insured with the appellant/insurance company was not involved in the accident, however, the burden of proof lies on the appellant to prove that the alleged vehicle was not involved in the accident. However, the said fact has not been proved in a proper manner by the Insurance company and no persons were examined on the side of the Insurance Company to prove the same.

9. It is the further contention of the learned counsel for the appellant that Ex.B1-Investigation Report has proved the insured car is falsely implicated. The Tribunal relied upon the evidence of R.W.1-the Investigating Agency. In the report under Ex.R1, there is nothing to state that the insured car was falsely implicated. Hence, the contention of the learned counsel for the appellant cannot be sustained.

10. So far as the quantum of compensation is concerned, the Tribunal, considering the age of the injured and nature of injuries sustained by them, awarded the amount of Rs.76,000/- and Rs.10,000/- respectively. The said amounts were awarded in the year 2007, which cannot be said to be excessive, more so in the year 2017 having regard to the decrease in the value of money.

11. Accordingly, these Civil Miscellaneous Appeals are dismissed, confirming the award dated 27.12.2007 made in M.A.C.T.O.P.Nos.12 and 126 of 2007 on the file of the Motor Accident Claims Tribunal (Fast Track Court-II), Tindivanam. petitioners/first respondents herein are permitted to withdraw the same. No costs. Consequently, connected miscellaneous petitions are closed.

12. The Insurance Company shall deposit the entire award amount along with the interest at the rate of 9% p.a. from the date of petition till the date of deposit, less the amount already deposited if any, within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the Tribunal is directed to transfer the amount directly to the bank account of the respective claimants through RTGS within a period of two weeks thereafter.

21.02.2017

Index : Yes / No

ogy/GLN

To

1. The Motor Accident Claims Tribunal
(Fast Track Court-II),
Tindivanam.

By the order dated 27.02.2017, this Judgment stands recalled.



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Dr.S.VIMALA, J.

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C.M.A.Nos.622 and 623 of 2017

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C.M.A.Nos.622 & 623 of 2017**Dr.S.VIMALA, J.**

The matter was listed before the Court on 21.02.2017. After hearing the learned counsel appearing for the appellant and there being no representation for the respondents, this Court dismissed the appeals on merit.

However, today (27.02.2017), it is brought to the notice of this Court that the matters were already settled before the Lok Adalat on 22.12.2016.

In such circumstances, the common Judgment passed by this Court dated 21.02.2017 is hereby recalled.

27.02.2017

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