

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :03.01.2017

CORAM :

THE HONOURABLE MR. JUSTICE G.CHOCKALINGAM

CMA.No.2112 of 2013
and MP.No.1 of 2013

Divisional Office
National Insurance Co. Ltd.,
110 JN Street,
Pondicherry.

... Appellant/2nd Respondent

Vs.

1.Ramachandran1st Respondent/Petitioner

2.Krishnamoorthy2nd Respondent/1st Respondent

3.Rahothaman

4.The Royal Sundaram Alliance
Insurance Company Ltd.,
46, Whites Road,
Chennai-14.

... 3rd & 4th Respondents

PRAYER : Petition filed under Section 173 of Motor Vehicles Act, against the judgment and decree dated 21.02.2012 made in MCOP.No.20 of 2005 on the file of the Motor Accidents Claims Tribunal, (subordinate Court), Panruti.

For appellant : Mr.S.Vadivel.

For respondents : Mr.D.Senthil Kumar for R1.

R2 to R4 - Batta Due.

JUDGMENT

The Civil Miscellaneous Appeal is filed against the order dated 21.02.2012 made in MCOP.No.20 of 2005 on the file of the Motor Accidents Claims Tribunal, (Subordinate Court), Panruti. Aggrieved against the order passed by the Tribunal, the second respondent before the Tribunal/insurance company has preferred this appeal.

2. The learned counsel for the appellant mainly contended that the trial Court without application of mind allowed the claim petition, since, the claimant filed claim petition under Section 166 of Motor Vehicle Act, the trial Court ought to have dismissed the petition. In this case, charge sheet was filed

against the claimant itself, hence, the claim petition is liable to be dismissed. The trial Court ought to have accepted the evidence of RW1 and rejected the evidence of PW1, due to the negligence the police registered the case against the claimant. Hence, the learned counsel for the insurance company prays to set aside the order of the Tribunal by allowing the appeal.

3. The learned counsel for the first respondent would mainly contend that the trial Court after considering the entire facts and circumstances of the case, awarded appropriate compensation to the claimant and there is no illegality or infirmity in the order passed by the Tribunal and the learned counsel prays for dismissal of the appeal.

4. The learned counsel for the first respondent relied on the Division Bench judgment of this Court reported in 2016 (2) TN MAC 289 (DB) - Oriental Insurance Co., Ltd., V. K.Parthiban and others, wherein in paragraphs 6 and 7 of the judgment, it is held as follows :-

"6. It appears in the case on hand, the Tribunal by stated that the version in the First Information Report is totally contradictory to the version given by the claimant/injured, has held that non-examination of the complainant based on which the FIR came to be registered is fatal to the case of the Insurance Company. It has also been held that failure of the Claimant to get the First Information Report registered is not fatal to the claim petition. In this connection, the Tribunal relied on the judgment of this Court reported in Divisional Manager, New India Assurance Co. Limited V. K.Mayandi 2013 (1) TNMAC 191; and Anbazhagan and others V. Shankar 2013(1) TNMAC 454. Further the Tribunal found that no charge sheet has been filed as against the injured claimant based upon the complaint filed by the Driver of the Car. Hence, the Tribunal has held that no evidence has been adduced by the Insurance Company rebutting the evidence adduced by the PW1/injured claimant and that the witness examined by the Insurance Company was also not an eyewitness. The tribunal has also stated that in the cross-examination, the witness examined on the side of the insurance company himself has stated that the claimant need not go towards right hand side as he is going towards Sriperambudur. Further for the damages caused to the car, no report from the Motor Vehicle Inspector has also been filed on the side of the Insurance Company. Therefore, the Tribunal has held that the accident had occurred only due to the rash and negligent driving by the first respondent.

7. On an analysis of the evidence on record and the reasoning given by the Tribunal, it is evident that the accident had occurred in a busy road, in front of the Nokia Company where movement of pedestrians would be on the high side. Had the driver of the car in question been more vigilant, he could have avoided the accident. In the above backdrop, we hold that the negligence is only on the part of the Driver of the car, which is insured with the appellant-Insurance Company."

5. The above decision is squarely applicable to the facts of the present case in hand. In the evidence of RW2, it is stated that due to rash and negligent driving of opposite vehicle alone the accident has occurred. Because of the injuries sustained by the claimant in the accident, the driver of the first respondent's vehicle preferred complaint against the claimant, the police also registered the case against the claimant, which is evident from the evidence of RW2. Hence, the arguments of the learned counsel for the appellant that the accident has occurred due to the rash and negligent driving of the vehicle by the claimant and he is not entitled for the compensation is liable to be rejected.

6. Heard the rival submission made on the side of the appellant and the first respondent and perused the available records.

7. The main contention of the learned counsel for the appellant in this case is that the charge sheet was filed against the claimant due to the negligence in driving, the trial Court ought to have dismissed the claim petition during the trial. On the side of the claimant he examined himself as PW1 and the Doctor/Balamurugan was examined as PW2 and marked FIR, reports of the Motor vehicle inspector, registration certificate of both the vehicles, driving licence of both the drivers, vehicle permit, insurance copies of both the vehicles, X-ray report, Discharge report of Jipmer Hospital and permanent disability certificate as Exs.P1 to P13. On the side of the respondent one Sivakumar and Rajagopal are examined as RW1 and RW2 and no documents were marked.

8. The trial Court after considering the evidence of PW1 specifically stated that on 09.12.2004 at about 10.30hours the claimant was riding the mini door vehicle bearing Registration No.TN31-F-0424 on the left side of the road from north to south i.e., towards Chennai to Panruti Road, the taxi bearing Registration No.TN46-B-9421 coming in the opposite direction in a rash and negligent manner dashed against the mini door vehicle, because of the said accident, the driver of the mini

door/claimant sustained injuries. Further, he also stated in his cross examination specifically stated that the driver of the taxi has given false complaint before the police against him.

9. In this case, the claimant drove the mini door carriage vehicle No.TN31-F-0424, the driver of the Tata Sumo tourist vehicle came in the opposite direction in rash and negligent manner caused the accident. It is useful to extract the evidence of RW2 examined on the side of the respondents which reveals as follows :-

விபத்தை நான் சத்தம்கேட்டு தான் பார்த்தேன் என்றால் நேரடியாக தான் பார்த்தேன். எந்த வாகனமும் எந்த வாகனத்தின் மீது மோதியது என்று எனக்கு தெரியாது என்றால் சரியல்ல. தெரியும். மனுதாரருடைய வாகனத்தால் தான் இந்த விபத்து ஏற்பட்டது என்று முதல் தகவல் அறிக்கை பதிவு, செய்யப்பட்டுள்ளது என்றால் அதுபற்றி எனக்கு தெரியாது என்றால் அது பற்றி எனக்கு தெரியாது. 1ம் எதிர்மனுதாரர் இந்த வழக்கு பற்றி புகார் கொடுத்துள்ளார் என்றால் அதுபற்றி எனக்கு தெரியாது.

10. On reading of the evidence of RW2 who was examined on the side of the respondent, would clearly reveals that because of the rash and negligent driving of the drivers alone the accident was occurred. It is clear that the trial Court came to a conclusion that because of the rash and negligent driving of the Tata sumo taxi the accident had occurred, and the driver of the mini door vehicle is not at all responsible for the accident. Hence, the arguments of the learned counsel for the appellant that the accident has occurred due to the rash and negligent driving of the vehicle by the claimant and he is not entitled for the damage is liable to be rejected.

11. This Court is of the considered view that due to the rash and negligent driving of the opposite vehicle i.e, Tata Sumo taxi bearing No.TN46-B-9421, the accident has occurred, the vehicle was insured with the appellant insurance company, which is liable to pay the compensation to the injured/claimant.

12. In this case, the learned counsel for the appellant mainly argued that the driver of the mini door vehicle alone is solely responsible for the accident and the learned counsel has not questioned about the quantum of compensation awarded to the claimant. In view of the above contention, this Court comes to the conclusion that the trial Court has awarded just and proper compensation to the claimant, which cannot be treated as excessive one. Hence, the argument of the appellant counsel deserves no merits and acceptance and this Court is not inclined to interfere with the award passed by the Tribunal.

13. In the result, the civil miscellaneous appeal stands dismissed. Consequently, connected miscellaneous petition is closed. No costs.

-s/d-
Assistant Registrar

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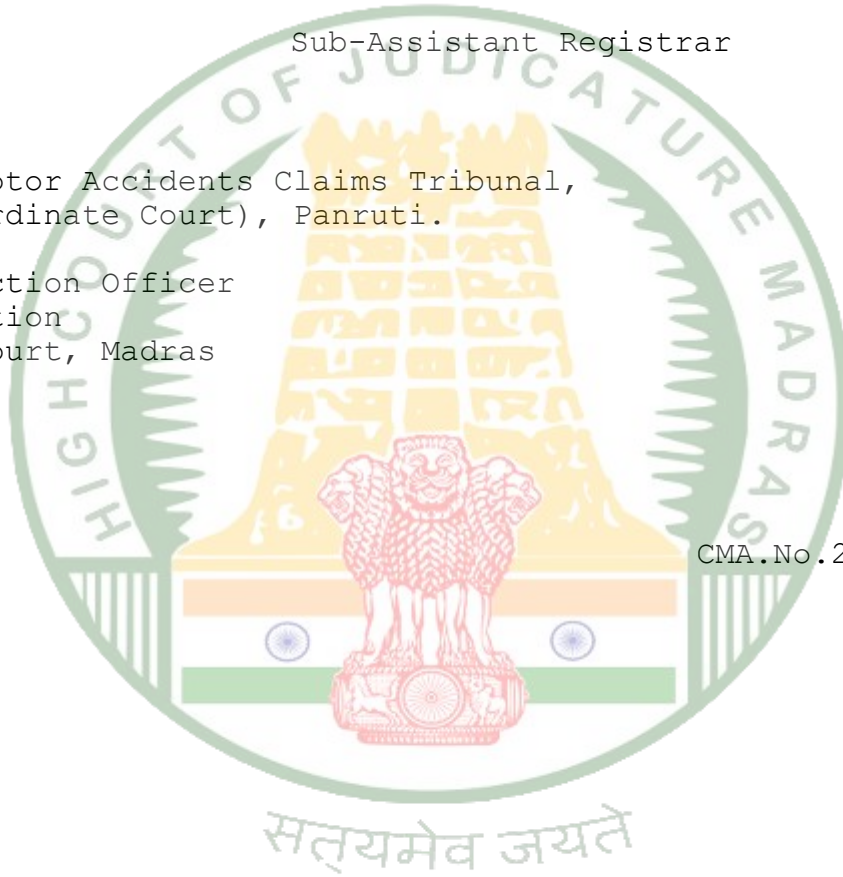
Sub-Assistant Registrar

To

1. The Motor Accidents Claims Tribunal,
(subordinate Court), Panruti.
2. The Section Officer
VR Section
High Court, Madras

CMA.No.2112 of 2013

CNR (CO)
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