

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.09.2017

CORAM: THE HONOURABLE Mr.JUSTICE N.SESHASAYEE

CMA.No.3118 of 2009
and MP.No.1 of 2009

The New India Assurance Co. Ltd.,
No.17, Court Main Road,
Sevvapet, Salem - 2. Appellant/2nd Respondent
Vs.

1.Kuttiapeyyan @ Ammasi
2.S.Madheshwaran ... Respondents/Petitioner
and 1st respondent

[2nd respondent ex parte in Lower Court
hence, notice may be dispensed with]

Prayer : Civil Miscellaneous Appeal preferred under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree in MCOP.No.770 of 2005 dated 22.07.2009 on the file of the Motor Accidents Claims Tribunal, Additional District Court, Fast Track Court No.I, Salem.

For Appellant : Mr.N.Vijayaraghavan
For Respondents : R1 - No appearance
R2 - Ex parte

JUDGMENT

The appeal has been filed by the New India Assurance Co. Ltd., as insurer of Mahindra Maxi Pickup Van TN 30 Y 6682 against the award dated 22.07.2009 in MCOP.No.770/2005 holding the insurer liable for Rs.84,932/- with interest at 7.5% per annum from 29.04.2005, till date of payment and proportionate costs. The insurer has contended that the Milk Van TN 0Y 6682 was not involved in the accident dated 31.03.2005 at about 5.45 a.m. on Tharamangalam to Nangavalli Road at Parakallur, Near Mariamman Temple and that the van was falsely implicated. The insurer has submitted that the Tribunal has ignored the evidence of R.W.1 (1st respondent/driver of the van) and R.W.2 (insurance official) and Ext.R1, complaint given by 1st respondent; Ext.R2 - trip sheet for the van and Ext.R3 (letter from the 1st respondent to appellant/insurer) and has mechanically concluded as if the van

was involved and van driver was negligent and awarded compensation.

2. Per contra, the counsel for claimant has submitted that Ext.P-1, FIR was followed by Ext.P.3 - MVI Report and even resulted in Ext.P.4, charge sheet against the first respondent/R.W.1 and it was clear that the said Milk Van also pass through the same road regularly and even on the date of accident. More importantly the claimant for counsel submitted that the insurer has not chosen to lodge any complaint before Crime Branch in respect of alleged false claim and as such, it is not open to the insurer to dispute liability.

3. Both sides did not dispute the quantum of Rs.84,932/- awarded for 15% permanent disability arising out of grievous injuries to the right thigh and hip region - including medical expenses of Rs.32,782/-. Hence, the appeal was heard only on liability/involvement of the Milk Van.

4. On careful consideration of the oral and documentary evidence adduced on both sides, it is clear that the insurer has failed to discharge the burden cast on them. Fundamentally, in this beneficial jurisdiction, it is settled law that it would suffice for the claimant to provide prima facie proof, in summary procedure, before the claims Tribunal, about the involvement of the vehicle and negligence of the driver. That burden has been discharged with evidence of P.W.1 read with Ext.P-1, FIR followed by Ext.P-3 MVI Report and a charge sheet in Ext.P-4 against the first respondent, owner cum driver of the Milk Van TN 30 Y 6682.

5. The burden has therefore shifted to the insurer to rebut the presumption raised by the claimant. Mere denial of involvement by first respondent/driver of the Milk van would not suffice. He is an interested witness - for all practical purposes and in the face of independent investigation by police, resulting in Ext.P-4 Charge Sheet, the insurer had a duty to challenge the inference from such a charge sheet. It is for this purpose the insurer has been provided with the remedy of lodging a complaint with Crime Branch with the jurisdictional Crime Branch in Tamil Nadu vide orders in W.P.No.7389/2005 (National Insurance Co. Ltd., Vs. Director, CBI). The insurer had the right and option to lodge a complaint seeking reinvestigation. Ext.R1 and Ext.R3 do not constitute such a complaint. Ext.R2, the trip sheet is a self serving document and does not have independent examination.

6. It is no doubt true that the Tribunal in paragraph Nos.7 on page 5 of its judgment has not considered the evidence of R.Ws.1&2 and Exts.R1 to R3. But that does not detract from the finding of the Milk Van TN 30 Y 6682 was involved in the

accident on 31.03.2005 and was negligent also. The insurer has not discharged the burden cast on them since the burden is heavy in this jurisdiction meant to protect the interest of accident victims. The least the insurer could have done is to seek reinvestigation and question Ext.P.4 charge sheet against the first respondent /driver of the Milk Van. In the absence of any such challenge, the logical inference would be that upon independent investigation the police have concluded that the Milk Van TN 30 Y 6682 was involved in the accident. Such a conclusion cannot be set aside on the basis of evidence adduced by the insurer. Most importantly, it is a matter of record that the Milk Van TN 30 Y 6682 also travels on the same road and it is not as if it had nothing to do with the said route. In such circumstances, one cannot rule out the possibility of the first respondent/driver disowning responsibility to avoid implications from involvement of the Milk Van. Mere doubt or suspicion raised by the insurer is not sufficient to support their defence. The evidence on their side is not credible and not sufficient to dismiss the claim. It is also pertinent to note that the first respondent chose to remain ex parte and did not file any counter but instead sought to appear as R.W.1. The said conduct does not help the cause of the appellant/insurer. For these reasons, this Court is inclined to uphold the claim against the insurer.

7. In fine, this Court is unable to accept the grounds raised by the appellant/insurer. The defence of the insurer is that the Milk Van TN 30 Y 6682 was not involved in the accident dated 31.03.2005 has not been proved, such responsibility lies on the insurer to provide evidence to this effect.

8. In the result, the appeal is dismissed confirming the award dated 22.07.2009 of the Court below. It is brought to the notice of this Court that by orders dated 11.11.2009 in MP.No.1 of 2009, further to the orders of interim stay, entire award amount with interest and costs was satisfied in compliance. Hence, the first respondent/claimant would be entitled to withdraw the deposited award sum along with accrued interest. There shall be no orders as to costs in this appeal. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

To:

1.The Additional District Judge,
Motor Accidents Claims Tribunal
Fast Track Court No.I,
Salem.

+1cc to Mr.P.JAGADEESAN Advocate, S.R.No. 65292

+1cc to MR.N.VIJAYARAGHAVAN Advocate, S.R.No. 65843

C.M.A.No.3118 of 2009

RR(CO)
TR(17/11/2017)



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