

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.07.2017

CORAM

THE HONOURABLE Dr. JUSTICE. S.VIMALA

C.M.A.No.2261 of 2017
and C.M.P.No.11991 of 2017

The Divisional Manager,
National Insurance Company Ltd.,
J.N.Street,
Pondicherry - 605 001. ... Appellant / 2nd respondent

versus

1. Punithan ... 1st respondent/Petitioner
2. C.Rajasekar ... 2nd respondent/1st respondent
(R2 remained ex parte
before the Tribunal)

Prayer: Appeal filed under Section 173 of Motor Vehicle Act 1988, against the Judgment and Decree dated 31.10.2006 made in O.P.No.187 of 2006 on the file of the Motor Accident Claims Tribunal (Fast Track Court No.1), Tindivanam.

For Appellants : M/s.D.Bhaskaran

JUDGMENT

This Civil Miscellaneous Appeal has been filed by the Insurance Company, challenging the finding on liability on the ground that there was no proof to show the involvement of the vehicle in question as alleged in the accident as well as negligence.

2. One Punithan, aged 22 years, a second year student of B.Sc., met with an accident on 07.05.2003 at 1.30 p.m. near Endiyur Bust Stop at Marakkanam to Tindivanam Main Road. A case in Crime No.340 of 2003 was registered by the Brammadesam Police Station in respect of the said accident under Sections 279 and 338 IPC. The vehicle involved in the accident was alleged to be a motorcycle bearing Regn. No.TN 20 X 5145.

3. It was the case of the claimant that when he was

standing along with his father at Endiyur Bust Stop at Marakkanam to Tindivanam Main Road, the motorcycle bearing Reg.No.TN20 X 5145 came in a rash and negligent manner and hit against him.

4. The Insurance Company disputed the liability on the ground that there was no negligence on the part of the rider of the vehicle and that the amount of compensation claimed was excessive. It is pertinent to mention that no specific defence has been taken in the counter that the vehicle was not at all involved in the accident.

5. The learned counsel appearing for the appellant Insurance Company submits that during the year 2008, there was a complaint made to CBCID alleging that false claim has been made alleging that the vehicle is involved in the accident, though in actuality the vehicle was not at all involved in the accident.

6. It was fairly conceded that there was no outcome, after investigation as to its involvement in the accident. In such circumstances, the defence has been taken by the insurer that the vehicle is not at all involved in the accident cant be accepted.

7. A perusal of the award reveals that the award was for a sum of Rs.60,300/-. Though the Insurance Company, at the time of trial has taken a defence that the vehicle was not at all involved in the accident, however, such a defence has not been taken in the original counter. Even if additional documents were available after investigation by the Police, this Court would have been inclined to consider the appeal because of the availability of additional materials. However, no such material has been placed before this Court to sustain the claim made by the insurer. Mere assertion would not take the part of proof, more especially in a case of accident, where the vehicle, which is said to be involved in the accident, is covered by insurance.

8. In the facts and circumstances of the case, the appellant having not proved the case by adducing documentary evidence, the defence that the vehicle is not at all involved in the accident, cannot be accepted. Hence, the appeal has no merits and the same is liable to be dismissed. Accordingly, the Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

9. The Insurance Company is directed to deposit the entire award amount, less the amount, if any, already deposited, along with interest at the rate of 7.5% p.a. from the date of petition till the date of deposit, to the credit of the claim petition, within a period of four weeks from the date of receipt of a copy

of this Judgement. On such deposit being made the Tribunal is directed to transfer the amount directly to the bank account of the claimant through RTGS within a period of two weeks thereafter.

Sd/-
Assistant Registrar(Audit)

//True copy//

Sub Assistant Registrar

ogy/GLN

To

1. The Motor Accident Claims Tribunal
(Fast Track Court No.1),
Tindivanam.
2. The Section Officer,
V.R.Section,
Madras High Court,
Chennai.

C.M.A.No.2261 of 2017

KJ(CO)
GN(28/03/2018)