

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.12.2018

CORAM:

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

CMA.No.386 of 2006
and
MP No.1225 of 2006

The Divisional Manager,
National Insurance Company Limited,
Pondicherry. Appellant / 2nd respondent

Vs.

1. A. Ganesan 1st respondent/ Claimant

2. A.Devanesan 2nd respondent/1st respondent

PRAYER: This Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988, against the Award dated 27.04.2004 passed in M.C.O.P.No.138 of 2003 by the Motor Vehicle Accidents Claims Tribunal, Fast Track Court No.2, Tindivanam.

For Appellant : Mr.S.Arunkumar

For Respondents 1 and 2 : No appearance

J U D G M E N T

The appellant, the National Insurance Company Limited, Pondicherry, is the 2nd respondent in MCOP No.138 of 2003 on the file of the Motor Accident Claims Tribunal, Fast Track Court.II, Tindivanam.

2. The claimant/first respondent filed a claim petition under Section 166(1) of the Motor Vehicles Act before the tribunal seeking compensation of Rs.4,00,000/- for the injuries sustained by him in a road accident that took place on 09.03.2001, while he was travelling as pillion rider in a motor cycle bearing registration No.TN-04-A-5332 belonging to the 2nd respondent (Devanesan) and insured with the present appellant.

3. The contention of the claimant/first respondent is

that due to the rash and negligent driving of the rider of the motor cycle bearing registration No.TN-04-A-5332, he was thrown out of the motor cycle and sustained grievous injuries.

4. The tribunal after considering the evidence on record, awarded a compensation of Rs.37,000/- to the claimant/first respondent with interest at the rate of 9% per annum and directed the owner of the two wheeler bearing registration No.TN-04-A-5332 and the insurer, the present appellant to pay compensation jointly and severally. Aggrieved over the same, the appellant / 2nd respondent has filed the present appeal questioning their liability to pay compensation to the claimant.

5. Mr.Arunkumar, learned counsel appearing for the appellant would contend that though the date of accident is indicated as 09.03.2001 in the claim petition, the first information report was belatedly registered on 17.03.2001 and the wound certificate Ex.A2 would go to show that the claimant/first respondent took treatment only on 17.03.2001. He would further contend that in the absence of records between the period 09.03.2001 and 16.03.2001, the tribunal should not have held that the claimant sustained injuries in a road accident that took place on 09.03.2001.

6. Though the respondents (claimant and the owner of the offending vehicle) were served with the notices, there was no appearance on their side. Therefore, their names are printed in the cause list.

7. It is true that the first respondent/claimant did not adduce any evidence to show that he sustained injuries in the accident that took place on 09.03.2001. Though Ex.A2 wound certificate shows that he sustained a fracture of bones on left fore arm, it is not clearly indicated as to how and on what date he sustained the said fracture. The first respondent/ claimant was not admitted in hospital immediately on the date of accident i.e. on 09.03.2001. The tribunal has failed to look into this aspect.

8. This court is conscious of the fact that there is an inordinate delay in registering the first information report. The registration of FIR and issuance of the wound certificate Ex.A2 appear to be suspicious. In order to curb such practice, this court feels that the matter should be remanded back to the trial court to find out the genuineness of the claim made by the first respondent/claimant. Therefore, the appeal is remanded back to the Motor Accident Claims Tribunal, Fast Track Court No.II, Tindivanam to consider all these aspects, after affording opportunities to both the parties to let in evidence.

9. In the result,

(i) The order passed in MCOP No.138 of 2003 on the file of the Motor Accident Claims Tribunal, Tindivanam dated 27.04.2004 is set aside and the case in MCOP No.138 of 2003 is remanded back to the Additional District and Sessions Judge, Motor Accident Claims Tribunal, Fast Track Court No.II, Tindivanam .

(ii) The learned trial judge is directed to find out the genuineness of the accident as contended by the claimant/first respondent other than the records produced by him, after affording him ample opportunities to let in evidence.

(iii) Since the accident took place in the year 2001, the tribunal is directed to dispose of the case within three months from the date of receipt of a copy of this order.

10. With the above observation, the appeal is disposed of. The connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (Insp Cell)

//True Copy//

Sub Assistant Registrar

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To

1 . Additional District and Sessions Judge,
Motor Accidents Claims Tribunal,
Fast Track Court No.2
Tindivanam.

2 . The Divisional Manager,
National Insurance Company Limited,
Pondicherry.

3. The Section Officer,
V.R. Section, High Court,
Madras.(2 copies)

+lcc to Mr. S.Arun Kumar, Advocate, S.R.No. 87019

CMA.No.386 of 2006
CMP No.1225 of 2006

SS(CO)
GN(13/06/2019)