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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.08.2018

CORAM:

THE HONOURABLE MR. JUSTICE R. PONGIAPPAN

Civil Miscellaneous Appeal No.1742 of 2011

The Oriental Insurance Co Ltd,
No.8, Esplanade,
Chennai-600 108.

.. Appellant/2nd Respondent

Vs

1.Devaki,
W/o.Kathirvel,
2.P.Krishnamoorthy,
S/o. R.P. Venkatanarayanan,
(2nd respondent ex parte in lower court
and hence notice may be dispensed with)

.. Respondents/Claimant & 1st Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the order and decree dated 05.10.2010 made in M.C.O.P.No. 3583 of 2005 on the file of the Motor Accident Claims Tribunal , III Court of Small Causes, Chennai.

For Appellant : Mr. N. Vijayaraghavan

For Respondents : R1- Mr. S. Parthasarathy
: R2- Ex parte

J U D G M E N T

Aggrieved over the award passed by the Motor Accidents Claim Tribunal, Chennai, in M.C.O.P.No. 3583 of 2005, the appellant herein, who is the 2nd respondent in the claim petition filed this appeal, in which, he is seeking the relief to set aside the order passed by the Claim Tribunal. In the Claim Tribunal, the 1st respondent had filed a Claim Petition under Section 166 of the Motor Vehicles Act, in which, she claimed a compensation of Rs.2,00,000/-, for the injuries sustained by her in the road accident. After, elaborate enquiry, the Claims Tribunal awarded a compensation of Rs.88,500/- with interest at the rate of 7.5% per annum, against which, the present appeal has been preferred.



2. In the Claims Tribunal, the case of the 1st respondent is as follows:

3. On 26.04.2005, at about 13.00 hours, when the claimant is walking in GST road near to MECS signal, a two wheeler bearing Registration No. TN 22 S 8662, came in a rash and negligent manner, and hit against the petitioner, thereby the petitioner sustained grievous injuries. The accident had occurred, due to the rash and negligent driving of the rider of motor cycle. According to the claimant, the 2nd respondent being the owner of the vehicle, and the appellant being the insurer of the vehicle, are liable to compensate the petitioner.

4. During the time of enquiry, the learned counsel appearing for the appellant, would contend that, at the time of accident, the vehicle which was now stated by the claimant bearing registration No. TN 22 S 8662 is not involved. He had further contented that immediately after the occurrence the petitioner was admitted in Government General Hospital, for taking the treatment. When at the time of admission, in the hospital, he reported to the Doctor that, the vehicle bearing Registration No. TN 01 H 5838 is hit against him. Based on the information given by the petitioner, the Doctor has entered the vehicle number in a accident register as TN 01 H 5838. Further, it was contented on the side of the appellant that, without considering the said aspect, the Claim Tribunal fixed the liability as against the appellant. So, the findings arrived by the Claim Tribunal is erroneous in law. Accordingly, he prayed to set aside the award passed by the Claim Tribunal.

5. Per contra, the learned counsel appearing for the 1st respondent/ claimant would content that, the particulars mentioned in the accident register, is may be based on the information, given by the injured or by the 3rd parties. However in the First Information Report, registration No. of the vehicle was correctly mentioned as TN 22 S 8662. He further contend even though, the First Information Report is prepared with a delay of 3 hours that alone is not the sufficient reason for disbelieving the evidence given by the claimant.

6. The rival submission made by the Counsel considered, in the Claim Tribunal, the claimant examined himself as P.W.1, the Doctor who issued a disability certificate to the P.W.1 was examined as P.W.2. Further, on the side of the petitioner copy of the First Information Report, discharge summary, X-ray and disability certificates are marked as Ex.P.1 to Ex.P.4 respectively. On the side of the respondents one Arumugam who is the Investigation Officer in the appellant company was examined as R.W.1, the Investigation report and the Accident register copy were marked as Ex.R.1 and Ex.R.2.



7. In this appeal, the only contention raised by the appellant counsel is the appellant is not having any liability to pay compensation, otherwise he did not challenge the quantum of compensation arrived by the Claim Tribunal. On going through the award passed by the Claim Tribunal, believing the contends of the Ex.P.1 First Information Report the claim Tribunal decided the appellant and the 2nd respondent are liable to pay the compensation, in otherwise, the evidence let in by the appellant is totally rejected in respect to the involvement of vehicle owned by the 2nd respondent.

8. It is common, when ever a person sustained injuries in the road accident or in otherwise, he immediately went to the hospital, and report the matter to the Doctor who is on duty. Thereafter, the Doctor who treated the injured, prepared an Accident Register, as per the information given by the injured. The other details found in the accident register copy is written by the Doctor only after getting information from the injured, or from the person who is accompanying with the injured. The said circumstances shows the doctor is not having any personal knowledge, with regard to the involvement of the vehicle, so believing the entire averments, made in the accident register copy is not the sound principle for deciding the case of the claimant, in favour of the appellant. In the said situation, on go through the copy of the First Information Report, it was mentioned that the alleged accident was happened, on 26.04.2005 at about 13.00 hours. Further, as per the accident register, the claimant was admitted in the hospital on the same day at about 13.25 hours. Accordingly, with in 25 minutes from the time of accident, the claimant was admitted in the hospital that too in the government hospital. In the said circumstances, the case has been registered on the same day at about 16.00 hours. So, on culling out the entire evidence let in by the claimants, it appears immediately after the accident, the injured was admitted in the hospital. More over, in the First Information Report, it was clearly mentioned the vehicle bearing registration No. TN 22 S 8662 alone is involved in the accident. Therefore, on the side of the appellant, in order to disprove the particulars mentioned in the First Information Report, in respect to the vehicle No. TN 22 S 8662, substantial evidence and materials are not produced. So, the contention raised by the appellant counsel did not create a platform for allowing this appeal. If really the Vehicle now mentioned by the claimant is not involved in the accident, nothing have prevented the appellant to lodge a criminal case against the claimant. Further more, since the Motor Vehicle Act is a benavelant legislation, for deciding this issue strict proof is not necessary.

9. Thereby, I am of the opinion, that the accident



pertaining to the claim petition had happened, only due to the rash and negligent act of the driver of the vehicle bearing registration No. TN 22 S 8662. since, the 2nd respondent in this appeal is the owner of the vehicle, and the appellant is being the insurer, both are jointly and severally liable to pay the compensation, fixed by the Claim Tribunal.

10. Coming to the point of quantum, the learned counsel appearing for the appellant, as well as the respondent have not disputed about the quantum of compensation arrived by the Claim Tribunal. Since, both the counsel appearing on either side agreed that the quantum fixed by the Claim Tribunal is found correct, the findings arrived by the Claim Tribunal with record to the quantum of compensation need not be changed. Accordingly, the appeal is dismissed and the award passed by the Claim Tribunal is confirmed. There shall be no order as to costs.

Sd/-

Assistant Registrar (CCC)

//True copy//

Sub Assistant Registrar

sbn
To

The Motor Accident Claims Tribunal,
III Court of Small Causes, Chennai.

Copy To : The Section Officer, VR Section, High Court, Madras.

+lcc to Mr.N.Vijayaraghavan,, Advocate SR.No.60256

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SSI (CO)

GMV (15/11/2018)