

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.12.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.549 of 2015

R.Natesan

.. Appellant/Petitioner

Vs.

1.R.Vasanth

2.United India Insurance Co. Ltd.,
70, N.S.C. Boss Road, Chennai 79. ... Respondents/Respondents

(R1 set exparte before the Tribunal)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988 against the award and decree dated 11.09.2012 made in M.C.O.P.No.20 of 2009, on the file of Sub Court, (Motor Accidents Claims Tribunal), Tiruchengode.

For Appellant : Mr.C.Kulanthaivel

For R2 : Mr.T.Ravichandran

J U D G M E N T
सत्यमेव जयते

This Civil Miscellaneous Appeal has been filed by the appellant/claimant, challenging the dismissal of the award dated 11.09.2012, made in M.C.O.P.No.20 of 2009, on the file of Sub Court, (Motor Accidents Claims Tribunal), Tiruchengode.

2.The appellant is the claimant who filed M.C.O.P.No.20 of 2009, on the file of Sub Court, (Motor Accidents Claims Tribunal), Tiruchengode, for the injuries sustained by him in the accident that took place on 01.07.2001. According to him, on 01.07.2001, while he was riding his Motor Cycle at 3.30 P.M, a lorry belonging to the 1st respondent bearing Registration No.TN-

E-1185, insured with the 2nd respondent, driven by its driver in a rash and negligent manner, dashed against the Motor Cycle, driven by the appellant. In the accident, the appellant sustained injuries and took treatment as in-patient from 01.07.2001 to 02.08.2001. The FIR was registered against the driver of the lorry. The 1st respondent, as owner of the lorry and 2nd respondent as the insurer of the lorry is liable to pay compensation.

3.The 1st respondent remained exparte before the Tribunal.

4.The 2nd respondent-Insurance Company filed counter statement and denied all the averments and contended that the lorry in question belonging to the 1st respondent was not involved in the accident. The involvement of the lorry in the accident was not identified. The appellant, in collusion with the police, gave a false complaint and registered FIR, based on the false complaint. From the report of the Motor Vehicles Inspector, it is seen that there is no damage to the lorry, whereas, a portion of the Motor Cycle was damaged and prayed for dismissal of the claim petition.

5.Before the Tribunal, the appellant examined himself as P.W.1 and the Doctor was examined as P.W.2 and 10 documents were marked as Exs.P1 to P10. The 2nd respondent-Insurance Company examined the Investigating Officer as R.W.1, owner of the lorry/1st respondent herein as R.W.2 and driver of the lorry as R.W.3 and marked 8 documents as Exs.R1 to R8.

6.The Tribunal, considering the pleadings, oral and documentary evidence, dismissed the claim petition, holding that the appellant failed to prove the involvement of the lorry and accident has not occurred as alleged by the appellant.

7.Against the said order of dismissal dated 11.09.2012, made in M.C.O.P.No.20 of 2009, the appellant/claimant has come out with the present appeal.

8.The learned counsel appearing for the appellant contended that the Tribunal erred in dismissing the claim petition on the ground that the FIR was lodged after 5 days of the accident and such a delay raises strong doubt on the involvement of the lorry in question. After the accident, the appellant was taken to hospital and accident was informed to the concerned Police and

they came only after 4 days and recorded the statement of the appellant and registered the case. The appellant could not go to the Police Station and lodge a complaint as he was taking treatment as in-patient in the hospital. The 1st respondent after receipt of notice in M.C.O.P, did not appear. The 1st respondent or her driver has not given any objection to the police or higher authorities, stating that false complaint has been registered against the lorry and driver of the lorry. The 2nd respondent has not given any complaint to the CBCID, alleging fraud and collusion between the appellant and the Police authority. The driver of the lorry who was examined as R.W.3 admitted his guilt and paid fine in the criminal case. Exs.R4 to R8 cannot be taken into account as they are obtained in the alleged investigation by R.W.1. The Tribunal failed to properly appreciate the FIR and other documents and appellant as P.W.1, who is the eye-witness and also the fact that no contra evidence was let in by the respondent. The Tribunal ought to have awarded compensation based on the evidence of P.W.2, Doctor and documents filed by the appellant before the Tribunal and prayed for allowing the appeal.

9. In support of his contentions, the learned counsel appearing for the appellant relied on the judgments reported in:

(i) 1975 AIR (Madras) 65 [Govind Singh and others Vs. A.S.Kailasam and another]:

"8.....Thus, it may be seen that the earliest version of R.W.1 is at variance with his evidence in Court and that version is to the effect that the car hit the pedestrian. More significant is the fact that, when R.W.1 was prosecuted for an offence under Section 337, I.P.C., he has voluntarily pleaded guilty to the charge framed against him. After having admitted before the Criminal Court that the accident took place due to his rash and negligent driving of the car, there is hardly any force in the present contention of R.W.1 that he did not drive the car rashly or negligently and that he was not to be blamed for the accident. It is no doubt seen that R.W.1 has attempted to reconcile the conflicting positions by projecting a story that his plea of guilt before the Criminal Court was not one of truth, but was one of the convenience, viz., to avoid making frequent visits to the Court to defend the case. This explanation is hardly convincing and, at any rate, cannot be allowed to be successfully

projected by R.W.1. An admission against his interest made by R.W.1 either before the Tribunal or elsewhere, has got to be taken into account in rendering a decision on the relative stands taken by the parties in the controversy. In the face of his own admission in connected proceedings arising out of the same incident, it is futile for R.W.1 to contend that the accident was not due to his negligence. This important aspect of the case has been totally lost sight of by the Tribunal. In view of this conclusion, it is unnecessary to make any probe into the veracity of the testimony of P.W.3 and R.W.3. Moreover, even according to R.W.1 no one else present on the road witnessed the accident, and this admission also waters down the contention of P.W.3 and R.W.3 that they were witnesses to the accident."

(ii)2010 (7) MLJ 284 [Branch Manager, New India Assurance Co. Ltd., Perambalur Vs. Balagurumoorthy]:

"8.....(1)Whether the claim of the first respondent herein/claimant for compensation should be rejected as fraudulent?"

13.....Of course, Judgment of the criminal Court shall not be binding on the civil Court or the Motor Accidents Claims Tribunal. However, if the Judgment is based on the plea of guilty, the admission contained in the plea of guilty is admissible as a piece of evidence."

"14....The evidence of R.W.1 regarding the subjective satisfaction of the investigator appointed by the appellant insurance company is inadmissible as he has got no personal knowledge...."

10.Per contra, the learned counsel for the 2nd respondent-Insurance Company contended that the 2nd respondent has proved by oral and documentary evidence that the lorry belonging to the 1st respondent was not involved in the accident and accident did not occur due to the rash and negligent driving by the driver of the lorry, who was examined as R.W.3, belonging to the 1st respondent. The 2nd respondent has produced statement from the wife of the appellant, 1st respondent and R.W.3, driver of the lorry to show that some other lorry dashed against the Motor Cycle driven by the appellant and the said lorry did not stop

after the accident and prayed for dismissal of the appeal.

11. Heard the learned counsel for the appellant as well as the 2nd respondent-Insurance Company and perused the materials available on record.

12. The specific case of the appellant is that the lorry belonging to the 1st respondent, driven in a rash and negligent manner by its driver, R.W.3 dashed against the two wheeler driven by the appellant from behind and caused the accident. Both the lorry belonging to the 1st respondent and the Motor cycle belonging to the appellant were inspected by the Motor Vehicle Inspector, who gave reports. From the report of the Motor Vehicle Inspector, marked as Ex.R1. The Tribunal has held that the accident would not have occurred as alleged by the appellant as there was no damage to the backside of the two wheeler.

13. The 2nd respondent-Insurance Company has contended that the lorry belonging to the 1st respondent was not involved in the accident and the appellant in collusion with the Police, has registered FIR based on false complaint. The 2nd respondent appointed a private Investigator, who examined the wife of the appellant who gave a statement that the lorry dashed on the backside of the two wheeler driven by the appellant and caused the accident, but the said lorry did not stop and was driven away. A person by name Rathinasababathy, known to them tried to catch the lorry in his TVS 50, but he could not trace the lorry. The said statement was marked as Ex.R4, through R.W.1, Investigating Officer of the 2nd respondent-Insurance Company. The appellant did not examine his wife to disprove the said statement contained in Ex.R4 and to state under what circumstances she gave such a statement. The owner of the lorry, the 1st respondent was examined as R.W.2 and driver of the lorry was examined as R.W.3. They have stated on oath that the lorry in question was not involved in the accident. They have also earlier given an affidavit to that effect before the notary public and the same were marked as Exs.R6 and R7.

14. The learned counsel for the appellant contended that the evidence of R.W.2, R.W.3 and Exs.R4 to R7 cannot be accepted, as FIR was lodged against R.W.3 and he accepted his guilt and paid fine. It is well settled that the Tribunal is not bound by the FIR or judgment in the criminal proceedings. The Tribunal has to independently consider the evidence let in by the parties and come to the conclusion with regard to negligence. It is pertinent to note that the appellant has stated that one

Kandasamy was travelling with the appellant at the time of accident. The appellant did not examine the said Kandasamy to prove that the lorry belonging to the 1st respondent only was involved in the accident. Considering all the facts in entirety and the reasons given by the Tribunal in dismissing the claim petition, this Court is of the view that there is no reason to interfere with the finding of the Tribunal. In the facts of the present case, the judgments relied on by the learned counsel for the appellant is not applicable to the present case and does not advance the case of the appellant.

15. In the result, this Civil Miscellaneous Appeal is dismissed. No costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

gsa
To

1. The Subordinate Judge,
(Motor Accidents Claims Tribunal), Tiruchengode.

2. The Section Officer,
VR Section,
Madras High Court.

+1cc to Mr.T.Ravichandran, Advocate sr.no.83408

+1cc to Mr.C.Kulanthaivel, advocate sr.no.83815

C.M.A.No.549 of 2015

nr 27/03/2019

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