

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.07.2018

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.M.A.NOS.599 OF 2008 AND 269 OF 2009
AND M.P.NO.1 OF 2009
IN
CMA.NO.269 OF 2009

The Manager,
United India Insurance Co., Ltd.,
No.53, North Raja Street,
Tiruvallur

... Appellant in both C.M.As/
2nd Respondent

.Vs.

Kamaliel

... 1st Respondent in C.M.A.No.599 of
2008/Petitioner

Murugan

... 1st Respondent in CMA.No.269 of
2009/Petitioner

2.Mathialagan

(2nd Respondent exparte before the
Lower Court and hence notice may
be dispensed with)

... 2nd Respondent in both
C.M.As./1st Respondent

Prayer in both CMAs.:-

These Civil Miscellaneous Appeals have been filed under
Section 173 of the Motor Vehicles Act, 1988 against the Judgment
and Decree dated 20.01.2007 made in M.C.O.P.Nos.195 and 406 of
2004 on the file of the Accident Claims Tribunal, (Additional
District Judge) Fast Track Court No.5, Thiruvallur.

For Appellant in both Appeals : Mr.M.B.Raghavan

For First Respondent in
both Appeals : Mr.A.R.Suresh

C O M M O N J U D G M E N T

In these appeals, the appellant-Insurance company is aggrieved by the impugned common fair and two separate decretal orders dated 20.1.2007 passed by the Motor Accidents Claims Tribunal presided over by the Additional District Judge (Fast Track Court No. 5), Tiruvallur.

2. By the impugned orders dated 20.01.2007, the Tribunal has awarded a sum of Rs.2,20,000/- to the 1st respondent-claimant in M.C.O.P.No.195 of 2004 impugned in C.M.A.No.599 of 2008 and a sum of Rs.1,20,000/- to the 1st respondent-claimant in M.C.O.P.No.406 of 2004 impugned in C.M.A.No.269 of 2009. The Tribunal has also awarded cost and fees payable to lawyer in the respective M.C.O.Ps.

3. A tractor with the trailer belonging to the 2nd respondent insured with the appellant was alleged to have knocked the Respondent No.1 (in both the CMA's) while they were walking on the road on 1.6.2003.

4. The accident is said to have taken place on 1.6.2003 while the FIR is dated 19.02.2004 dated for the two claims filed on 12.04.2004 and 17.06.2004 before the Tribunal.

5. The primary ground on which the impugned orders are challenged before this Court is that the FIR was filed after a lapse of 260 days after the date of the alleged accident on 1.6.2003 and therefore the Tribunal erred in allowing the claim.

6. Before the Tribunal, the appellant herein has not produced any evidence to controvert the case of the either of the 1st respondent that the accident occurred on 01.06.2003 involving the tractor-trailer belonging to the 2nd respondent insured with the appellant herein. The 2nd respondent owner of the tractor remained exparte before the Tribunal.

7. On the other hand, the appellant defended itself before the Tribunal on the ground that the FIR was delayed and therefore raised a serious question regarding the alleged accident and the injuries alleged to have been suffered by either of the claimants in the respective cases.

8. Heard the counsel for the appellant and the 1st respondent and perused the pleading, document and evidence on record.

9. It was reiterated that since the FIR was filed after a lapse of 260 days of the alleged accident and therefore raises a serious doubt and that the claimants (1st respondent in the respective CMA's) scouted for a convenient vehicle to fasten liability on the appellant-insurance company.

10. The law on the subject is no longer res-integra. The Hon'ble Supreme Court has clarified the legal position. In *Ravi v. Badrinarayan*, (2011) 4 SCC 693 : (2011) 2 SCC (Crl) 751: (2011) 2 SCC (Civ) 426 at page 698, the Hon'ble Supreme Court held that "It is well settled that delay in lodging the FIR cannot be a ground to doubt the claimant's case. Knowing the Indian conditions as they are, we cannot expect a common man to first rush to the police station immediately after an accident. Human nature and family responsibilities occupy the mind of kith and kin to such an extent that they give more importance to get the victim treated rather than to rush to the police station. Under such circumstances, they are not expected to act mechanically with promptitude in lodging the FIR with the police. Delay in lodging the FIR thus, cannot be the ground to deny justice to the victim". Therefore, mere delay in filing of the FIR cannot defeat the rights of an accident victim straight away unless there is evidence to the contrary to sustain the objection of the appellant insurance company. It is not open for the appellant to merely contend that the alleged accident did not take place merely on the ground that there was a delay in the filing of the FIR.

11. Claimants-1st Respondents in either of the cases are a mason and a lorry cleaner and therefore some amount of latitude can be extended for the delay. Therefore, a mere failure to lodge the FIR at an earlier opportunity cannot defeat a motor accident claim based on assumptions and presumption that they were staged. In absence of evidence to question the validity of the FIR, the Tribunal cannot disallow the claim. Thus, the impugned orders cannot be interfered on account of the delay in lodging of the FIR.

12. Further, the amounts awarded for the injury suffered by the respective claimants have not been seriously contested. The claimant's (1st respondent in the respective CMA's) and a doctor deposited evidence before the Tribunal on behalf of their case.

13. The appellant has however not produced any evidence or marked any documents to controvert the case regarding the accident or the injury.

14. The order also discusses the manner in which the compensation has been arrived for the injuries suffered after considering Ex.P.4 Disability Certificate issued to P.W.1-Claimant Kamaliel and Ex.P.7 disability certificate issued to P.W.2-claimant Murugan.

15. The Tribunal has not fully accepted the evidence of P.W.3 doctor vide Ex.P.7 for Murugan-1st respondent in absence of x-ray and has awarded only a sum of Rs.1,20,000/- to Murugan-1st respondent in C.M.A.No.269 of 2009 On the other hand, for P.W.1 the Tribunal has considered Ex.P.4 issued by a Hospital in K.K.Nagar and accepted traumatic paralysis with spondylitis. Ex.P.4 has assessed the disability of 66% to Kamaliel-1st respondent in C.M.A.No.599 of 2008.

16. There is reasoning and application of mind while assessing the evidence and in awarding compensation of Rs.2,20,000/- and Rs.1,20,000/- to the respective claimants. Therefore, the quantum of compensation awarded is just and therefore cannot be disturbed.

17. In the light of the above discussion, these civil miscellaneous appeals are dismissed. No cost. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

kkd

To

The Additional District Judge,
Motor Accident Claims Tribunal,
Fast Track Court No.5, Thiruvallur.

Copy To

The Section Officer,
VR Section, High Court,
Madras. (2 Copies)

+1cc to Mr.A.R.Suresh, Advocate, S.R.No.43668

C.M.A.Nos.599 of 2008 and 269 of 2009
and M.P.No.1 of 2009

MP (CO)
CS/30/08/18