

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.07.2019

CORAM:

THE HON'BLE MR. JUSTICE R.MAHADEVAN

Civil Miscellaneous Appeal No.1699 of 2006

Muniappan

...Appellant / Petitioner

Vs

1. K. Kantha

2. The Branch Manager,
United India Insurance Co. Ltd.,
"Venus Nivas",
Tindivanam Town,
Villupuram District

...Respondents/Respondents

Prayer: Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and award dated 12.04.2004 passed in M.C.O.P.No.362 of 2002 on the file of the Motor Accident Claims Tribunal, Fast Track Court No.I, Tindivanam.

For Appellant : Mr.A.K.Kumaraswamy,
Senior Counsel for
Mr.S.Kaithamalai Kumaran

For Respondents: Mrs.R.Sreevidhya for R2

R1 - Ex parte

JUDGMENT

The facts of the case, are as follows:

The appellant was working as lorry driver under the first respondent-owner of the lorry. On 24.07.1996, the appellant herein was driving the lorry bearing Reg.No.TDJ-7441 belonging to the first respondent and insured with the second respondent Insurance Company, from Kilmavilangai to Padalam Sugar Factory. When the lorry reached near National Farm, G.S.T.Road near Karunkuzhi, due to the rash and negligent driving of its driver, the lorry turned turtle. Due to the impact, the appellant sustained injuries. Initially, he took treatment in the Government Hospital, Maduranthagam and thereafter took treatment in private hospitals. The appellant filed a claim petition before the Tribunal claiming a sum of Rs.35,000/- as compensation. The Tribunal dismissed the claim petition stating that only the appellant drove the vehicle in a rash

and negligent manner and caused the accident.

2.Challenging the same, the appellant has filed the present Civil Miscellaneous Appeal.

3.The learned counsel for the appellant, at the outset, submitted that the Tribunal has failed to see that the Insurance Company did not adduce any evidence to rebut the evidence of P.W.2 claimant/appellant herein. He further submitted that the Tribunal failed to see that the Insurance policy covers the risk of bodily injury or death of driver as additional premium paid and hence the claim is very much maintainable and the award as claimed by the appellant herein has to be awarded.

4. On the other hand, learned counsel for the second respondent Insurance Company has submitted that Tribunal has correctly dismissed the claim petition, as the driver is not covered under the insurance policy. It is also submitted that the insurance policy has also been marked before the Tribunal and the Tribunal has discussed in detail about the coverage of the policy to the 3rd parties. Stating so, she prayed that the award passed by the Tribunal need not be interfered with by this Court.

5. This Court has considered the submissions made by the learned counsel on both sides and the perused the materials available on record.

6. The Tribunal has dealt with the case of the appellant along with one another claimant in the same accident, who was the cleaner in the said lorry. Both the cases were taken up together and a common award was passed by the Tribunal. While dealing with the case on hand, the Tribunal has taken note of the following:

(i)The evidence of P.W.2/appellant herein, did not establish the factum of accident in detail.

(ii)While coming to the conclusion that the accident had occurred due to the rash and negligent driving of the driver of the lorry himself, the Tribunal relied upon the decision of this Court in the case of National Insurance Company Limited Vs. R. Mohan [1996 ACJ 1951], wherein it has been held that if the accident had occurred on account of the negligent driving of the driver, the compensation cannot be claimed by the driver himself. The said decision has been elaborately considered by the Tribunal, while dismissing the claim petition.

(iii)Apart from the above, the driver of the lorry/appellant herein has not proved the accident by way of documentary evidence in a proper perspective.

7. On a thorough analysis of the materials and evidence available on record and the impugned judgment of the Tribunal, this Court is of the considered view that the Tribunal has

correctly considered the materials and evidence available on record and relying upon the relevant case law, dismissed the claim petition on the ground that compensation cannot be claimed by a driver, if the accident had occurred due to the rash and negligent driving of the driver himself. Hence, this Civil Miscellaneous Appeal does not deserve consideration and accordingly the same is dismissed. No costs.

Sd/-

Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

srk / mp

To

1. Motor Accident Claims Tribunal,
Fast Track Court No.I, Tindivanam.
2. The Section Officer, V.R.Section
Madras High Court, Chennai -104.

+1cc to Mr.R.Sreevidhya, Advocate, S.R.No.56059

C.M.A.No.1699 of 2006

PA (CO)
GN (26/08/2020)

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