

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 12.07.2019

PRONOUNCED ON : 09.08.2019

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.1734 of 2006

Arumugam

...

Appellant

Vs

1.Selvaraj

2.Thasiyan

3.The Oriental Insurance Co.Ltd.,
Malik Mahal, HPO Junction,
Nagercoil-629 001.

4.P.Subramaniam

5.National Insurance Co.Ltd.,
Branch Office, 7, Raja Street,
Gobichettipalayam-638 476,
Erode District.

(Notice to 1st respondent given up)

... Respondents

Appeal under Section 173 of the Motor Vehicles Act against the judgment and decree dated 16.09.2004 made in MCOP No.317 of 2002 on the file of the Motor Accidents Claims Tribunal / First Additional Sub Court, Erode.

For Appellant : Mr.N.Manokaran

For Respondents: Mr.S.Manohar for R3
Mr.D.Baskaran for R5

R1 : Given up

R4 : Died

JUDGMENT

The facts of the case in brief, are as follows:

On 12.11.1999, at about 8.00 a.m., the appellant-Arumugam, who was working as a Driver in the lorry bearing Reg.No.TN-33-U-2747, stationed the lorry in the Petrol Bunk on the Mumbai - Puna High Road in Panvel, Maharashtra State. At that time, another lorry bearing Reg.No.KL-01-B-4030, driven by the first respondent herein in a rash and negligent manner, came to the wrong side of the road and dashed against the stationed lorry. Due to the said impact, the appellant sustained injuries. The appellant filed a claim petition before the Tribunal. On considering the materials and evidence available on record, the Tribunal dismissed the claim petition on the ground that the appellant / claimant has not proved that he worked in the lorry bearing Reg.No.TN-33-U-2737.

2.Challenging the same, the appellant / claimant has come up with this Civil Miscellaneous Appeal.

3.The learned counsel for the appellant / claimant has submitted that the Tribunal has failed to note that the appellant was working as one of the Drivers of the lorry bearing Reg.No.TN-33-U-2747 and the evidence of P.W.3 would also support the same. Due to some linguistic problem, the name of the driver has been named as 'R.Mohan' instead of 'Arumugam'. The accident took place in the State of Maharashtra where there is every possibility of confusion in pronouncing the name. According to the learned counsel for the appellant, if the appellant is not the person involved in the accident, there is no embargo on the authorities to summon the so-called 'R.Mohan' as witness to substantiate their claim. He also submitted that the Tribunal ought to have taken note of the overall picture, while rejecting the claim of the appellant.

4.The learned counsel for the third respondent Insurance Company has submitted that the lorry bearing Reg.No.KL-01-B-4030 was not insured with the third respondent; that the vehicular documents such as R.C., F.C.and permit of the vehicle were not valid as on the date of accident. He also submitted that the driver was not holding the valid driving licence for driving the lorry bearing Reg.No. KL-01-B-4030. It is specifically submitted that one Subramaniam was working as driver in the lorry bearing Reg.No.TN-33-U-2747 and along with the said Subramaniam, one Mohan was also working as a Driver and when the said Mohan was washing his face, while sitting in the cleaner's seat, the accident had occurred. No documents have been filed to substantiate that the appellant-Arumugam was

working as a Driver in the said lorry and hence the appellant is not connected to the case at all. Stating so, the learned counsel submitted that the Insurance Company is not liable to pay any compensation to the claimant.

5.The learned counsel for the fifth respondent has submitted that only the driver of the lorry bearing Reg.No.KL-01-B-4030 came in a rash and negligent manner and dashed against the lorry bearing Reg.No.TN-33-U-2747 and hence the appellant has to seek his remedy only from the owner and insurer of the lorry bearing Reg.No.TN-33-U-2747.

6.In the claim petition as well as in the judgment of the Tribunal, the insurer of the lorry bearing Reg.No.TN-33-U-2747 is stated as M/s.United India Insurance Co.Ltd., Gobichettipalayam, in the cause list, but in the present appeal, it has been stated as M/s.National Insurance Co.Ltd., Gobichettipalayam (fifth respondent).

7.Heard the learned counsel on either side and perused the materials available on record carefully and meticulously.

8.As per Ex.P1-First Information Report, it is seen that on 12.11.1999, the lorry bearing Reg.No.TN-33-U-2747 was driven by the claimant as a Driver and when he stationed the lorry near a petrol bunk in the Mumbai - Puna High Road in Panvel, Maharashtra State, the lorry bearing Reg.No.KL-01-B-4030 came in a rash and negligent manner and dashed against the stationed lorry. But in the First Information Report, the name of the driver has been mentioned as 'R.Mohan'. P.W.1-Arumugam, the appellant herein, deposed before the Tribunal that a case has been filed in Crime No.181 of 1999 in the Panvel Police Station, in this connection. According to the appellant, the name of the driver has been misspelt as 'R.Mohan' instead of 'Arumugam' due to language translation problem. Even though P.W.4-Subramaniam had deposed before the Tribunal that he is the owner of the lorry bearing Reg.No.TN-33-U-2747 and that the appellant-Arumugam and one K.Subramani were working as Drivers, no documentary evidence has been adduced before the Tribunal to substantiate that the appellant-Arumugam was working as Driver at the time of occurrence. It is apparently clear that in the First Information Report, one R.Mohan has been stated as the Driver at the relevant point of time. Further, the documents relating to the above crime number in the concerned Police Station, also did not show that only the appellant-Arumugam was the driver at the time of accident.

9.In these circumstances, the Tribunal rejected the claim petition filed by the appellant - claimant on the ground that the same does not deserve consideration for grant of

compensation. The Tribunal has considered the matter on a threadbare analysis of the materials and evidence adduced on record in proper perspective and came to the conclusion that the appellant's claim does not deserve any consideration. This Court is not inclined to interfere with such findings rendered by the Tribunal, on a thorough analysis of the facts.

10. In view of the above stated circumstances, the Civil Miscellaneous Appeal deserves only to be dismissed and accordingly it is dismissed. No costs.

Sd/-

Assistant Registrar (CS-V)

//True copy//

Sub Assistant Registrar

KM

To

1. The Motor Accidents Claims Tribunal
I Additional Sub Court, Erode.

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

+1cc to Mr. N. Manokaran, Advocate SR.No. 68728

+1cc to Mr. S. Manohar, Advocate SR.No. 68438

+1cc to Mr. D. Bhaskaran, Advocate SR.No. 68296

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PM(CO)

GMV (08/11/2019)

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