

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.06.2019

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.520 of 2007
and M.P.No.2 of 2007

New India Assurance Co.Ltd.
Vellore.

..Appellant/2nd Respondent

Vs.

1.Suresh Babu
2.Balamurugan

..1st Respondent/Petitioner

..2nd Respondent/1st Respondent

Appeal under Section 173 of the Motor Vehicles Act against the judgment and decree dated 28.03.1006 made in MCOP No.376 of 2001 on the file of the Motor Accidents Claims Tribunal (Sub-Court), Ranipettai, Vellore District.

For Appellant : Mr.S.Manohar

For Respondents : No appearance for R2

JUDGMENT

This appeal is preferred by the Insurance Company against the award of a sum of Rs.63,165/- towards compensation to the first respondent, due to the injuries suffered by him in a motor vehicle accident.

2.The case in brief, is as follows:

On the fateful day, ie. on 08.07.2001, the first respondent was riding his motorcycle bearing Reg.No.TN-23-T-0028 from West to East direction in the Gudiyatham - Katpadi Road, Vellore. At 12.30 p.m., when he reached Perumankuppam Village Junction Road within K.V.Kuppam Police Station limits, another motorcycle bearing Reg.No.TN-23-F-3845 belonging to the second respondent, driven by its rider in a rash and negligent manner, came from the opposite direction and dashed against the first respondent's motorcycle. Due to the said impact, the first respondent was thrown out and sustained multiple grievous injuries. The first respondent / claimant filed a claim petition before the Tribunal. On consideration of the materials and evidence available on record, the Tribunal awarded a total compensation of Rs.63,165/- with interest at the rate of 9% per annum from the date of petition.

3.Challenging the same, the appellant Insurance Company has filed the present Civil Miscellaneous Appeal.

4.The learned counsel for the appellant has submitted that the Tribunal failed to appreciate that the motorcycle alleged in the claim petition, ie., the motorcycle bearing Reg.No.TN-23-F-3845, was not at all involved in the accident, as there was fraud and collusion between the claimant and the owner of motorcycle bearing Reg.No.TN-23-T-0028, in implicating the above motorcycle. He further submitted that the First Information Report was lodged after a delay of 52 days, which itself shows the attitude of the claimant.

5.Heard the learned counsel for the appellant Insurance Company and perused the materials available on record carefully and meticulously.

6.The first respondent / claimant has not been properly served. The appellant Insurance Company has not taken steps to serve papers to the first respondent, even at this length of time.

7.P.W.1 is the claimant. P.W.2 is the Doctor. R.W.1 is the Development Officer of the appellant Insurance Company. As per the evidence of P.W.1, the claimant, the motorcycle bearing Reg.No.TN-23-F-3845 came in a rash and negligent manner from the opposite direction and dashed against the motorcycle which the claimant was riding. R.W.1 deposed before the Tribunal that the complaint was given by the claimant belatedly. P.W.1 also agreed that only after a period of 1½ months from the date of accident, he gave the complaint. On a perusal of Ex.P1- First Information Report and Ex.P7-Copy of charge sheet, it is seen that on 08.07.2001, as stated by the claimant, the accident had occurred at 12.30 p.m.in the Perumankuppam Village Junction Road and a case has been filed by the K.V.Kuppam Police. It is also seen that R.W.1 was not aware of the accident directly. In these circumstances, the Tribunal came to the conclusion that the accident had occurred only due to the rash and negligent driving of the driver of the motorcycle bearing Reg.No.TN-23-F-3845. The Tribunal has properly considered the materials and evidence on record and came to the correct conclusion that the accident had occurred only due to the rash and negligent driving of the driver of the motorcycle bearing Reg.No.TN-23-F-3845. This Court is not inclined to interfere with the said factual finding rendered by the Tribunal. The learned counsel for the appellant Insurance Company is not disputing the quantum of compensation awarded by the Tribunal and hence the same need not be interfered with.

8.In the result, the Civil Miscellaneous Appeal is dismissed. No costs. Consequently, the connected miscellaneous petition is closed. The appellant Insurance Company is directed to deposit the award amount as ordered by the Tribunal with interest, after deducting the amount if any already deposited, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit being made, the first respondent / claimant is permitted to withdraw the same, on making proper application before the Tribunal.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

The Motor Accidents Claims Tribunal
(Sub-Court), Ranipettai, Vellore District.

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

+1 cc to M/s.S.Manohar, Advocate Sr.No. 49048

AKM/05.12.19/3P-4C /

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