

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :18.02.2019

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

CMA Nos.1491 & 1492 of 2011
and
MP.Nos.1 of 2011 (2cases)

1.D.Sekar

2.M/s.National Insurance Company Ltd.,
Divisional Office, No.65, Perundurai Salai,
Erode Town & District. ... Appellants/Respondents
(in both CMA's)

Versus

E.Kasi ... Respondent/Claimant in MCOP No.88/05
(in CMA.1491 of 2011)

Smt.Chinnappa ... Respondent/Claimant in MCOP No.89/05
(in CMA.1492 of 2011)

Common Prayer: Civil Miscellaneous Appeals filed under section 173 of Motor Vehicle Act, 1988 against the Judgment and Decree in M.C.O.P.Nos.88 and 89 of 2005 respectively, dated 29.06.2010 on the file of the Motor Accidents Claims Tribunal, Chief Judicial Magistrate Court, Salem.

For Appellants : Mr.N.Vijayaraghavan
(in both CMAs)
For Respondents : No Appearance
(in both CMAs)

COMMON JUDGMENT

These two appeals have been filed against a common award dated 29.06.2010 made in M.C.O.P. Nos. 88 & 89 of 2005 on the file of the Motor Accidents Claims Tribunal, Chief Judicial Magistrate Court, Salem awarding a sum of Rs.1,26,639/- and Rs.1,39,416/- as compensation with interest, for the injuries sustained by the claimants.

2.According to the claimants, on 30.07.2004 at about 6.45 am they were travelling in the two wheeler - TVS 50 bearing Registration No. TN 34 B 0375 from Erode to Chithode in the

Erode to Sathi Main Road, which was driven by the claimant in MCOP No. 88 of 2005 in which the claimant in MCOP No. 89 of 2005 travelled as a pillion rider. When the vehicle was nearing Bharathi Nagar Roja Nagar, the car bearing Registration No. TN 38 M 8998 was driven in a rash and negligent manner and hit the two wheeler. In the impact, the claimants fell down and sustained injuries. For the injuries sustained by them, they have filed the claim petition seeking compensation of Rs.4,00,000/- and Rs.3,00,000/- respectively.

3.The Insurance Company resisted the claim petition by contending that the Car belonged to the first respondent did not hit the two wheeler at all. In fact, the two wheeler was driven by the driver in a rash and negligent manner and skidded, which resulted in the injury. The investigation done by the Insurance company through their officials revealed that the driver of the car, on witnessing injuries sustained by the claimants helped them on a humanitarian gesture. The owner of the car therefore took the claimants to hospital. In any event, the car did not hit the two wheeler at all, as alleged and that the claim petition has been filed with malafide intention to get compensation from the insurance company. At the same time, the insurance company also denied the age, avocation and income of the claimants and prayed for dismissal of the claim petition.

4.The Tribunal considered the evidence of the claimants as eye witnesses and relying on Ex.P1, F.I.R concluded that the car driver was responsible for the accident. The Tribunal did not consider the evidence of RW1, owner of the car. The Tribunal also discarded the evidence of R.W.2 police official who deposed that the first information report was closed as Mistake of Fact on the ground that the claimants admitted that they fell on their own. The Tribunal also rendered a finding that the statement made under Section 161 of Code of Criminal Procedure is not admissible in evidence and did not support the case of insurer. More importantly, it was admitted on record that in respect of false and fabricated insurance claims - there was a separate agency available with CBCID or Crime Branch in each district for insurers to file a complaint to seek re-investigation. In this case no such complaint was given against the closure of the first information report and therefore, the Tribunal concluded that the claims were acceptable and passed the awards.

5.The appellants-owner of the car and insurer would contend that the car was not involved in the accident at all. In fact R.W.1-owner of the car had helped the victims/injured on a humanitarian gesture by taking them to hospital, but, he was

falsely implicated in the case as though he was responsible for the accident. According to insurer the rider/pillion rider skidded and fell on the road and the car did not hit them at all.

6. Heard the counsel for the appellants. The appellants did not dispute the quantum awarded in both cases. The dispute was with respect to the involvement of the insured car belonging to first appellant. It is found that notices in the appeals were served and names of the injured claimants printed in the list. But they are not represented by any counsel.

7. Before the Tribunal, first information report was filed as Ex.P1 which discloses the involvement of the car. The first appellant, owner of the car was examined as R.W.1 and he admitted that he was on the spot of the accident. But he deposed that he was only helped the victims on a humanitarian gesture. While exercising appellate jurisdiction against an award passed by the Tribunal under Section 166 of the Motor Accidents Act, which is a benoalent legislation, mere preponderance of probabilities would be suffice to award compensation to the victims. The claimants have discharged the burden cast on them by adducing oral and documentary evidence. The burden shifted to the appellants to establish their case. Even in the counter statement of the appellants there is clear cut denial. They only suggest that the claimants may have fixed the insured vehicle for claiming compensation as the car did not hit the two wheeler at all. Further the evidence of R.W.2, police official does not inspire confidence as claimants were not given notice before closing the first information report as Mistake of Fact. The first information report is relied upon by the claimant as the basis for their claim. The closure of first information report as Mistake of fact does not automatically mean that there was no involvement of the car. The insurer has stated that they did not file any complaint to CBCID or Crime Branch upon closure of the first information report. When the claimants disputed any statement leading to closure of first information report, the insurer has to independently prove it. This Court is of the view that the burden on the appellants is heavy in this welfare jurisdiction meant for the benefit of the accident victims. The husband and wife were injured and there is medical evidence to show the nature of injuries sustained. The fact that car owner RW1 was on the spot of accident is not disputed. The allegation that RW1 only helped the victims to reach the hospital has not been proved in a manner known to law. Further, the compensation awarded by the Tribunal is also modest.

8. For these reasons, this Court is satisfied that the factual finding of the Tribunal is justified in the circumstances. No case is made out by appellants to reverse the said finding. Now 15 years have gone by since the date accident

and the award amount have also been deposited. Therefore also, this Court do not find any reason to interfere with the awards passed by the Tribunal.

9.In the result, the Civil Miscellaneous Appeals are dismissed. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

klt

To

The (Chief Judicial Magistrate),
Motor Vehicles Accident Claims Tribunal
Salem.

+2cc to Mr.N.Vijayaraghavan, Advocate Sr.14741, 14742

CMA Nos.1491, 1492 of 2011
and
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srg 10/06/2019

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