

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.10.2019

CORAM:

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.538 of 2017

Arumugam

... Appellant /Petitioner

Vs.

1. P.Srinivasan

2. The Oriental Insurance Company Ltd.,  
Rep.by the Divisional Manager,  
Katpadi Road, Vellore -4.

... Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 11.04.2003 made in M.C.O.P.No.432 of 2002, on the file of the Motor Accidents Claims Tribunal, Additional District and Sessions Judge's Court (F.T.C) Vellore.

For Appellant : Mr.V.K.Rajagopalan

For R2 : Mr.D.Baskaran

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the judgment and decree dated 11.04.2003 passed by the Motor Accidents Claims Tribunal, District Court, Tiruvannamalai (for short, "the Tribunal"), in M.C.O.P.No.432 of 2002, whereby, the Tribunal dismissed the claim petition filed by the claimant seeking compensation of Rs.1,50,000/- due to the injuries sustained by him in a motor vehicle accident.

2.The case in brief, is as follows:

On 28.08.2000 at about 04.00 p.m., the appellant / claimant, aged 52 years, a pensioner of TANSI and a coolie worker was proceeding in the Vellore Officers Line Road, opposite to Fish Market, by walk. At that time, the motorcycle bearing Reg.No.TN-23-B-2878, belonging to the first respondent and insured with the second respondent Insurance Company, came in a rash and negligent manner and hit against him. Due to the impact, the appellant sustained grievous injuries. He took treatment in the Government Pentland Hospital, Vellore and despite treatment, he has not fully recovered from his ailments. The Police registered

a case against the rider of the offending vehicle. The injured / claimant filed a claim petition before the Tribunal claiming a sum of Rs.1,50,000/- as compensation. On consideration of the materials and evidence available on record, the Tribunal dismissed the claim petition. Hence, this appeal by the claimant.

3.Assailing the impugned judgment, the learned counsel for the appellant/claimant has submitted that the Tribunal has failed to take note of Ex.A6-Disability Certificate, which clearly shows that the appellant sustained injuries. It is also submitted that the Tribunal has not clearly stated as to how the respondents are not liable to pay compensation to the appellant. It is further submitted that the Tribunal ought to have considered the evidence of P.Ws.1 and 2 and Exs.A1 to A7 and allowed the claim petition.

4.The learned counsel for the second respondent Insurance Company has submitted that the Tribunal, after examining the oral and documentary evidence adduced before it, has rightly dismissed the claim petition, which does not call for any interference at the hands of this Court.

5.Heard the learned counsel for the appellant / claimant and the learned counsel for the second respondent and perused the materials and evidence available on record, carefully and meticulously.

6.The appellant / claimant has been examined as P.W.1 before the Tribunal. During cross examination, he admitted that he gave complaint before the Police, three days after the accident. As per the First Information Report, the offending vehicle was bearing Reg.No.TDJ-2377. The main objection of the Insurance Company is that the first respondent's motorcycle did not involve in the accident. With regard to this aspect, R.W.1 and R.W.2 have been examined on the side of the Insurance Company. R.W.1-Krishnakumar, Insurance Surveyor, has deposed that after he enquired about the accident, he filed a report and as per the enquiry, it was found that one motorcycle bearing Reg.No.TDJ 2377 was found involved in the accident. An Assistant of the Insurance Company was examined as R.W.2 and he has stated that as per Ex.B2-Investigation Report, only the motorcycle bearing Reg.No.TDJ-2377 was shown as offending vehicle and which is a bullet motorcycle.

7.It is also seen that after the claimant was admitted in the hospital, the police recorded his statement. At that time, he clearly stated before the police that the offending motorcycle was bearing Reg.No.TDJ 2377. But in the claim

petition, he has totally reversed his stand and has taken a plea that one Hero Honda motorcycle bearing Reg.No.TN 23 B 2878 came in a rash and negligent manner and hit against him. The reason given by P.W.1/claimant for the subsequent inclusion of the 1<sup>st</sup> respondent's vehicle is not convincing. It is also seen that the claimant has given the particulars of the vehicle bearing Reg.No.TDJ-2377 to the Doctor. Ex.B1 is the letter addressed to the Divisional Manager, Oriental Insurance Company by the claimant, in which, he has accepted that TDJ 2377 a bullet motorcycle which came in a rash and negligent manner and hit against him.

8.As per the F.I.R., P.W.1. has admitted that one Iyyappan and Raghu rescued him to the hospital. These two persons have been cited as witnesses in the final report as found in Ex.A3. But the claimant has not taken steps to secure the presence of the above witnesses and to have their evidence. In these circumstances, the Tribunal held that the appellant / claimant does not have any right to sue against the respondents as they are not the tort-feasors and accordingly dismissed the claim petition. The Tribunal has analysed the materials and evidence in a proper perspective and came to the conclusion that the respondents are not liable to pay any compensation to the appellant. This Court is not inclined to interfere with the said factual finding rendered by the Tribunal.

9.In view of the above stated circumstances, the Civil Miscellaneous Appeal stands dismissed. No costs.

Sd/-  
Assistant Registrar

//True Copy//

सत्यमेव जयते  
Sub Assistant Registrar

av/km

To

1. The Additional District and  
Sessions Judge's Court (F.T.C),  
Motor Accident Claims Tribunal,  
Vellore.

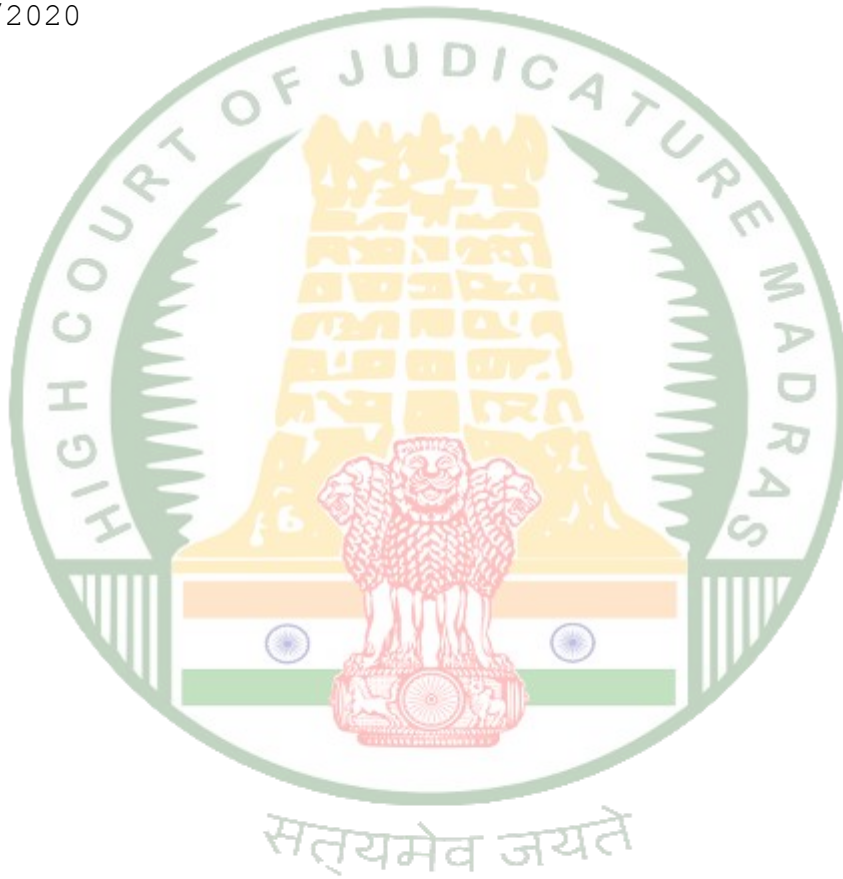
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2.The Section Officer,  
VR Section,  
High Court, Madras.

+1cc to Mr.D.Bhaskaran, Advocate Sr.84882

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