

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.03.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1432 of 2007

and

M.P.No.1 of 2007

M/s.National Insurance Company Limited,
Branch Office,
Palaghat. Appellant/2nd Respondent

Vs.

1.P.Sivakumar1st Respondent/Claimant
2.T.P.Kannan2nd Respondent/1st Respondent
3.N.M.Mohammaduppa3rd Respondent/3rd Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 28.07.2006 made in M.C.O.P.No.583 of 2004 on the file of the Motor Accidents Claims Tribunal, II Additional Sub Court, Erode.

For Appellant : Ms.N.B.Surekha

For R1 : Mr.R.Nalliyappan

For R2 : No appearance

R3 : Not ready in notice

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the award dated 28.07.2006 made in M.C.O.P.No.583 of 2004 on the file of the Motor Accidents Claims Tribunal, II Additional Sub Court, Erode.

2.The appellant is the 2nd respondent in M.C.O.P.No.583 of 2004 on the file of the Motor Accidents Claims Tribunal, II Additional Sub Court, Erode. The 1st respondent filed the said claim petition, claiming a sum of Rs.4,00,000/- as compensation for the injuries sustained by him in the accident that took place on 14.12.2002.

3. According to the 1st respondent/claimant, on 14.12.2002 at about 03.00 P.M., while he was riding as a pillion rider in a motorcycle bearing Registration No. KL 09 H 7592 ridden by one Balasubramaniam from West to East in front of Kanjikulam Co-operative Bank, Palakkad, the driver of the Auto, 2nd respondent herein drove the same in a rash and negligent manner from East to West in a high speed and hit the motorcycle and caused the accident. In the said accident, the 1st respondent sustained grievous injuries and he was immediately taken to Kovai Medical Centre and Hospital, Limited, Coimbatore for treatment. At the time of accident, the 1st respondent was aged 24 years and was a Post Graduate Degree holder, was an Electronic Goods Seller in Tamilnadu and Kerala, was a financier, was also doing agriculture and was earning a sum of Rs.8,000/- per month. Due to the injuries caused by him in the accident, he was unable to do his work as he was doing earlier. Therefore, he filed the said claim petition, claiming a sum of Rs.4,00,000/- as compensation for the injuries sustained by him against the respondents 2 and 3 and the appellant-Insurance Company, being the driver, owner and insurer of the Auto.

4. The respondents 2 and 3, being the driver and owner of the Auto remained exparte before the Tribunal.

5. The appellant-Insurance Company, being the insurer of the Auto filed counter statement and denied all the averments made by the 1st respondent/claimant. According to the appellant-Insurance Company, the accident did not take place as alleged by the 1st respondent. The date and time of the accident is not correct and the 1st respondent along with respondents 2 and 3 colluded together and filed the claim petition with ill-motive. The alleged accident occurred on 14.12.2002 but the intimation was given to the Police only on 27.12.2002 and there is no proper explanation for the delay. The Insurance Policy of the Auto covers from 15.12.2001 to 14.12.2002 and the accident occurred on 14.12.2002, midnight. Therefore, the complaint was prepared with ill-motive with suppression of the real date and time of accident and falsely given the previous date and time of accident is not correct and genuine. The name of the driver and the Registration Number of the Auto differs in the F.I.R. and in the charge sheet. In the F.I.R., the driver's name is mentioned as Radhakrishnan, whereas, in the charge sheet, the driver's name is mentioned as T.P.Kannan and the said T.P.Kannan alone was charge sheeted. In the F.I.R., the Registration Number of the Auto is mentioned as KL 09 H 6085, whereas, in the charge sheet, the Registration Number is mentioned as KL 09 H 6132. The 1st respondent has to prove that the driver of the Auto was possessing valid driving license to drive the vehicle on the

date of accident. The owner of the Auto deliberately breached the policy conditions and hence, the appellant-Insurance Company is not liable to pay any compensation to the 1st respondent/claimant. The 1st respondent has to prove his age, educational qualification, avocation and income by producing valid documents. In any event, the quantum of compensation claimed by the 1st respondent/claimant is highly excessive and prayed for dismissal of the claim petition.

6. Before the Tribunal, the 1st respondent/claimant examined himself as P.W.1 and two Medical Officers were examined as P.W.2 and P.W.3 and 12 documents were marked as Exs.A1 to A12. On behalf of the appellant-Insurance Company, one V.Vajravel, Assistant Manager of the National Insurance Company Limited, Erode was examined as R.W.1 and one Arumugham, Assistant Sub-Inspector of Police, Kongadu Police Station, Palakkad Sub-Division, Palakkad was examined as R.W.2 and copy of the Insurance Policy was marked as Ex.B1.

7. The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the Auto, the 2nd respondent herein and directed the respondents 2 and 3 as well as the appellant-Insurance Company, being the driver, owner and insurer of the Auto jointly and severally to pay a sum of Rs.1,58,700/- as compensation to the 1st respondent/claimant.

8. Challenging the said award dated 28.07.2006 made in M.C.O.P.No.583 of 2004, the appellant-Insurance Company has come out with the present appeal.

9. Though the appellant-Insurance Company has raised various grounds with regard to quantum of compensation in the grounds of appeal, at the time of arguments, the learned counsel appearing for the appellant-Insurance Company restricted her arguments not questioning the quantum of compensation and contended that the Tribunal failed to see that there was an enormous delay of 14 days in lodging the complaint. The Tribunal erred in accepting the evidence of P.W.1 for the delay in lodging the complaint. The Tribunal erred in fixing entire negligence on the part of the driver of the Auto. The 1st respondent has not explained as to how and why the wrong Registration Number of the Auto and the name of the driver has been mentioned in the F.I.R. The Tribunal erred in relying on the judgment of the Criminal Case to fix the negligence on the part of the 2nd respondent and fastening the liability on the part of the appellant-Insurance Company. The Tribunal failed to see that 1st respondent in collusion with respondents 2 and 3, lodged a false case with an intention to claim compensation against the appellant-Insurance Company. The Tribunal failed to see the suspicious circumstances in the

alleged accident by the 1st respondent and prayed for setting aside the award passed by the Tribunal.

10.Per contra, the learned counsel appearing for the 1st respondent contended that the Tribunal considering the evidence of P.W.1, final report of the Police, judgment of the Criminal Case and the evidence of R.W.2, held that the accident occurred only due to rash and negligent driving by the driver of the Auto belonging to the 2nd respondent and prayed for dismissal of the appeal.

11.Heard the learned counsel appearing for the appellant-Insurance Company as well as the learned counsel appearing for the 1st respondent and perused the entire materials on record.

12.It is the contention of the 1st respondent that while he was riding as a pillion rider in the motorcycle bearing Registration No. KL 09 H 7592 ridden by one Balasubramaniam, the driver of the Auto belonging to the 2nd respondent drove the same in a rash and negligent manner and dashed against the motorcycle in which the 1st respondent was riding as a pillion and caused the accident. To substantiate the said contention, the 1st respondent examined himself as P.W.1 and marked F.I.R., which was registered against the driver of the Auto as Ex.P1. On the other hand, it is the case of the appellant-Insurance Company that the policy issued for the Auto is in the name of the 3rd respondent and there is delay of 14 days in lodging the F.I.R. and in the F.I.R., different name and Registration Number of the Auto is mentioned than what is stated in the claim petition. The complaint has been lodged after 14 days of the accident with convenience of the respondents 1 and 3. This creates suspicious circumstances with regard to alleged accident and involvement of the Auto. To substantiate this contention, the appellant examined the Investigator as R.W.1 and Assistant Sub-Inspector of Police as R.W.2. R.W.2 admitted that he is giving evidence based on the records and he has no personal knowledge about the accident. In view of the same, the Tribunal rejected the evidence of R.W.2.

13.As far as delay in lodging the complaint and Registration of the F.I.R. is concerned, the accident has occurred in Palakkad on 14.12.2002 at 3.00 P.M. and according to the 1st respondent, he was admitted in the Kovai Medical Centre and Hospital Limited, Coimbatore at 05.45 P.M. on the same day and therefore, the complaint was not given in time. The Tribunal considering the evidence of 1st respondent as P.W.1, documents filed by him and evidence of R.W.2, accepted the claim of the 1st respondent and held that the accident has occurred only due to rash and negligent driving by the driver of the Auto belonging to the 2nd respondent. The Tribunal also accepted the explanation

given by the 1st respondent with regard to Registration Number in the F.I.R. and claim petition as the complaint was given after 14 days from the date of accident. There is no error in the above finding of the Tribunal, warranting interference by this Court.

14. For the above reason, this Civil Miscellaneous Appeal is dismissed and sum of Rs.1,58,700/- awarded by the Tribunal as compensation to the 1st respondent/claimant, along with interest and costs is confirmed. The respondents 2 and 3 as well as the appellant-Insurance Company, being the driver, owner and insurer of the Auto are jointly and severally directed to deposit the award amount along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P.No.583 of 2004 on the file of the Motor Accidents Claims Tribunal, II Additional Sub Court, Erode. On such deposit, the 1st respondent is permitted to withdraw the award amount, along with interest and costs, after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The II Additional Subordinate Judge,
Motor Accidents Claims Tribunal,
Erode.

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

+1cc to M/s.N.B.Surekha, Advocate Sr.18596
+1cc to Mr.R.Nalliyappan, Advocate Sr.18627

C.M.A.No.1432 of 2007

vba[co]
srg 16/09/2020