

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.01.2020

C O R A M

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.3185 2006

and

MP No.2 of 2006

The Branch Manager,
National Insurance Co. Ltd.
Thanjavur

..Appellant/2nd Respondent

Versus

1.Vetrivel

..1st Respondent/Petitioner

2.Vaithilingam

..2nd Respondent

Prayer: Civil Miscellaneous Appeal filed against the order and decree dated 10.08.2005 made in M.C.O.P.No.112 of 2003 on the file of the Motor Accident Claims Tribunal, Subordinate Judge, Tiruvarur.

For Appellant : Mr.Arun Kumar
For Respondent1 : Mr.S. Umapathy
For Respondent2 : Not ready Notice

J U D G M E N T

The appellant/Insurance Company has filed this appeal against the order and decree dated 10.08.2005 made in M.C.O.P.No.112 of 2003 on the file of the Motor Accident Claims Tribunal, Subordinate Judge, Tiruvarur whereby the 1st respondent/claimant was awarded a sum of Rs.83,000/- (Rupees Eighty Three Thousand Only) with interest @ 9% p.a. by the Tribunal.

2. The brief fact of the case is as follows:

(i). The claimant/1st respondent herein had sustained injuries in the road accident after he was hit by a Motor Cycle on 17.08.2002 at about 7 p.m. near Udayamarthandam Village due to rash and negligent driving of motor cyclist. Due to injury sustained by the claimant, the claim petition was filed in M.C.O.P. No.112 of 2003 by the claimant on the file of the Motor Accident Claims Tribunal, Subordinate Judge, Tiruvarur. After considering the oral and documentary evidence, the Tribunal has awarded compensation for a sum of Rs.83,000/- along with interest @ 9% p.a. from the date of petition till the date of deposit of the compensation amount.

3. Being aggrieved by the aforesaid award of the Tribunal, the Insurance Company/the appellant herein has filed the present petition questioning the liability on it.

4. The learned counsel for the appellant/Insurance Company would contend that without considering the oral and documentary evidence with regard to the offending vehicle, the Tribunal has awarded compensation fixing liability on the appellant/Insurance company. It is nevertheless to say that the appellant was not hit by Vehicle No. TN-50-B-4639 whereas the claimant/1st respondent herein had informed to R.W.1/Doctor during the admission in the hospital that he sustained grievous injury after he was hit by vehicle no. TN-50-B-1426 which is not insured in the appellant Insurance Company. Further even though the vehicle no. TN-50-B-1426 has also been recorded in Ex.R1-Wound Certificate given by the Doctor/Ex.R1 for causing the said accident as per the statement deposed by the claimant during the treatment in the Government hospital, the Tribunal being fixed liability on the appellant/the Insurance Company is liable to be quashed.

5. On perusal of the oral and documentary evidence, it is admitted fact on either side that the claimant has sustained grievous injuries in the road accident on 17.08.2002 at 7.00 p.m. due to rash and negligent driving of the Motor cyclist. He was rushed to the Government Hospital, Thiruthuraipundi, with unconscious for treatment to save his life, then, he was referred to Thanjavur Medical College Hospital, Thanjavur, for further treatment.

6. Since the issue is relating to which Motor vehicle is involved in the accident in which the 1st respondent/claimant has sustained injuries, it can be seen in FIR/Ex.P1 that when the 1st respondent/claimant was investigated about the accident in Thanjavur Medical College Hospital, the 1st respondent/claimant has not specifically reported any vehicle number rather than vehicle's name being merely said to be "T.V.S. Suzuki Motor Cycle driven by Senthil Kumar" before the investigating officer during the treatment in the Thanjavur Medical College Hospital, Thanjavur.

7. Further, F.I.R./Ex.P1 makes clear that when the claimant was crossing the main road, a TVS Suzuki driven by Mr. Senthil kumar, hit him. At the time of the accident, when the claimant was unconscious, he was admitted in the Government hospital, Thiruthuraipundi, along with Mr. Senthil Kumar by their local people. In his statement, the claimant has informed that he was unconscious at the time of the accident. Hence, he could have given wrong number to the Doctor in view of the admission in the hospital for treatment of injuries to save his life. Thereafter, when recording F.I.R, the injured/claimant has said the offending vehicle as T.V.S. Suzuki Motor Cycle without mentioning its registration number stating all above details.

8. Thereafter, Charge sheet/Ex.P8 and Report of Motor vehicle Inspection/Ex.P9 makes clear that TVS Suzuki bearing Registration No.TN.50.B-4639 is involved in the aforesaid accident causing injuries to the claimant where the vehicle no. TN-50-B1426 was not mentioned in their report.

9. In view of the aforesaid discussion and observation, it is clear that TVS Suzuki bearing Registration No.TN.50.B-4639 is only involved in the aforesaid accident causing injuries to the claimant/1st respondent herein. Further, it is seen that the appellant/Insurance Company has not examined any of the witnesses who has travelled in the said offending vehicle and also not examined motor vehicle inspector to prove that the vehicle in question was not involved in the accident. Further, no material was placed to substantiate the vehicle in question is not involved in the accident.

10. Under these circumstances, this Court is not inclined to interfere with the award passed by the Tribunal. Hence, the appeal is dismissed confirming the award passed by the Tribunal. No Costs. Consequently, connected miscellaneous is closed.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

lbm

To

1. The Motor Accident Claims Tribunal,
Subordinate Judge, Tiruvarur

2.The Section Officer,
V.R.Section, High Court, Madras.

+1cc to Mr.S.Umapathy, Advocate SR.No.3681

+1cc to Mr.S.Arun Kumar, Advocate SR.No.3578

C.M.A.No.3185 2006
and
MP No.2 of 2006

SVI (CO)
GMY (17/08/2020)