

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.06.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2454 of 2010

K.Deivamani

.. Appellant/Claimant

Vs

1. M.Senthilraja

2. A.Venkatesh

3. The United India Insurance Company Limited,
Branch Office,
146-N, Kumar Complex,
Tiruchengode,
Namakkal District.

... Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 03.04.2009 made in M.C.O.P.No.153 of 2006 on the file of the Motor Accidents Claims Tribunal, Chief Judicial Magistrate's Court, Erode.

For Appellant : Mr.S.Suganthan
for Mr.N.Manokaran

For RR 1 & 2 : No appearance

For R3 : Ms.K.Poomalai
for Mr.C.Paranthaman

J U D G M E N T
सत्यमेव जयते

This Civil Miscellaneous Appeal has been filed against the award dated 03.04.2009 made in M.C.O.P.No.153 of 2006 on the file of the Motor Accidents Claims Tribunal, Chief Judicial Magistrate's Court, Erode.

2.The appellant is the claimant in M.C.O.P.No.153 of 2006 on the file of the Motor Accidents Claims Tribunal, Chief Judicial Magistrate's Court, Erode. He filed the said claim petition, claiming a sum of Rs.3,00,000/- as compensation for the injuries sustained by him in the accident that took place on 10.04.2004.

3. According to the appellant, on 10.04.2004 at about 05.15 P.M., while he was riding his motorcycle bearing Registration No. TN 33 AB 5429 towards Chithode on Manickkampalayam - Rasampalayam road, near Muthumanickka Nagar (Downward road), the 1st respondent who was driving the Maruthi car bearing Registration No. TN 33 K 6066 in the opposite direction, came in a rash and negligent manner and dashed against the appellant and caused the accident. In the accident, the appellant fell down and sustained multiple grievous injuries all over his body. After the accident, the appellant was admitted at Sundhar Nursing Home, Perundurai road, Erode as inpatient. At the time of accident, the appellant was aged 33 years and was running a Chicken and Mutton stall in the name of 'Mani Chicken and Mutton stall' and was earning a sum of Rs.6,000/- per month. Due to the injuries sustained by him in the accident, he could not continue his work as he was doing earlier. Therefore, he filed the said claim petition, claiming a sum of Rs.3,00,000/- as compensation against the respondents 1 to 3, being the driver, owner and insurer of the Maruthi car respectively.

4. The respondents 1 and 2, driver and owner of the Maruthi car remained exparte before the Tribunal.

5. The 3rd respondent-Insurance Company, being the insurer of the Maruthi car filed counter statement and denied various averments made by the appellant. According to 3rd respondent-Insurance Company, the accident has not occurred as alleged by the appellant. The 2nd respondent's Maruthi car was not involved in the accident, as alleged by the appellant. The accident occurred on 10.04.2004 at 05.15 P.M. and the appellant has given complaint to the Police only on 12.04.2004 at 09.30 A.M. and the F.I.R. was registered at 11.00 A.M. There was a delay of three days in giving written complaint to the Police and registering the F.I.R. The Maruthi car belonging to the 2nd respondent's was inspected by the Motor Vehicle Inspector only on 18.04.2004 and as per the Motor Vehicle Inspector's report, no damage was caused to the Maruthi car belonging to the 2nd respondent. This clearly shows that the 2nd respondent's car was not involved in the accident and also no accident occurred as alleged by the appellant. Hence, the 3rd respondent-Insurance Company is not liable to pay any compensation to the appellant. The appellant has to prove that the 1st respondent was having valid driving license and also the car belonging to the 2nd respondent was insured with the 3rd respondent-Insurance Company on the date of accident. The appellant has not produced any medical bills and he is not entitled to any compensation as claimed. The appellant has to prove his age, avocation, income, nature of injuries and period of treatment taken by producing valid documents. In any event, the quantum of compensation claimed by the appellant is highly excessive and prayed for dismissal of the claim petition.

6.Before the Tribunal, the appellant examined himself as P.W.1, Dr.S.Venkatesan was examined as P.W.2 and 11 documents were marked as Exs.P1 to P11. The 3rd respondent-Insurance Company did not let in any oral and documentary evidence.

7.The Tribunal, considering the pleadings, oral and documentary evidence, dismissed the claim petition on the ground that the appellant has not proved the nature of accident.

8.Challenging the order of dismissal dated 03.04.2009 made in M.C.O.P.No.153 of 2006 and for granting compensation, the appellant has come out with the present appeal.

9.The learned counsel appearing for the appellant contended that the Tribunal erred in dismissing the claim petition by adopting technicalities in appreciating the evidence like Civil and Criminal cases even though such an interpretation is not permitted in Motor Accident cases. The appellant got injured in the accident that occurred on 10.04.2004 at 05.15 P.M. and was admitted in hospital at 06.30 P.M. The Hospital Authorities sent information to the Police immediately on the same day but Police had leisurely registered the case only on 12.04.2004. The appellant was taking treatment as inpatient and therefore the delay of two days in registering the F.I.R. will not affect the claim of the appellant. The 1st respondent, driver of the car pleaded guilty and paid fine and there is no contra evidence let in by the respondents to disbelieve the evidence of the appellant. In the absence of any contra evidence, the Tribunal erred in dismissing the claim petition. The Tribunal failed to see that a victim in a road accident would normally be not in a position to note down the registration number of the offending vehicle. The occupant of the car took the appellant in his car and dropped him in his home and hurriedly left the place which shows that respondents 1 and 2 are responsible for the accident. The Tribunal failed to note that offending vehicle was seized by the Motor Vehicle Inspector after one week from the date of accident and meanwhile the damage to the car would have been repaired by the owner. The Tribunal having held that respondents are no way responsible for the accident, erred in quantifying the compensation as Rs.63,865/-. The finding of the Tribunal are mutually destructive and prayed for allowing the appeal.

10.Per contra, Ms.K.Poomalai, learned counsel appearing for the 3rd respondent-Insurance Company made submissions supporting the award passed by the Tribunal and prayed for dismissal of the appeal.

11.Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the 3rd respondent-Insurance Company and perused the entire materials on record.

12.It is the contention of the appellant that while he was riding his motorcycle on 10.04.2004 at 05.15 P.M., the 1st respondent, the driver of the car belonging to the 2nd respondent drove the car in a rash and negligent manner, dashed against him and caused the accident. The appellant deposed that he was admitted in the hospital immediately after the accident. In the F.I.R., which was registered based on his complaint, it was stated the occupants of the car took the appellant and dropped him in his house and left the place in a hurried manner. The appellant has not stated at what time he was admitted in the hospital and who took him to the hospital. Further, from the award of the Tribunal, it is seen that information was given to the Police only after two days of the accident and the Police enquired the appellant in the hospital and registered the F.I.R.

13.The contention of the learned counsel appearing for the appellant in the present appeal is that Hospital Authority immediately informed the Police about the accident on the same day, but the Police has registered the F.I.R. only after two days, i.e., on 12.04.2004. There is no materials on record to substantiate this contention. On the other hand, the Tribunal has taken note of the fact that no information was given by the Hospital Authority in writing to the Police. The appellant has not examined any person from the Hospital to prove that information regarding accident was given immediately on 10.04.2004 itself to the Police. The contention of the learned counsel appearing for the appellant that 1st respondent, driver of the car pleaded guilty and paid fine in the Criminal case shows that 1st respondent, driver of the car belonging to the 2nd respondent drove the car in a rash and negligent manner and dashed against the appellant and caused the accident is not acceptable. In the present case, though trial was conducted and 1st respondent was not found guilty based on the evidence let in before the Criminal Court. Even if judgment of the Criminal Court is rendered on merits, the same is not binding on the Tribunal. The Tribunal has to decide the negligence based on the evidence let in before it. The Motor Vehicle Inspector has inspected the car and report was marked as Ex.P5. The Tribunal found that Motor Vehicle Inspector has stated that there was no damage to the car. Further the contention of the appellant that car was inspected by the Motor Vehicle Inspector after 10 days of the accident and 2nd respondent, owner of the car would have repaired the damages is without merits. The appellant has not examined the Motor Vehicle Inspector and has not put to any question to the Motor Vehicle Inspector as to whether there was any damages to the car. In the present case, the Tribunal considering the contradiction in the evidence of the appellant as P.W.1 and contents of F.I.R. and failure on the part of the appellant or his relatives to lodge a complaint to the Police immediately when the respondents 1 and 2 left the appellant in

his home and left the place in a hurried manner, held that there is suspicion about involvement of the car and accident. The Tribunal, accepted the contention of the learned counsel for 3rd respondent-Insurance Company that appellant and respondents 1 & 2 colluded together and lodged a false complaint and made a false claim and dismissed the claim petition. There is no error or perversity in the reasoning given by the Tribunal warranting any interference by this Court.

14. In the result, this Civil Miscellaneous Appeal is dismissed confirming the order dated 03.04.2009 made in M.C.O.P.No.153 of 2006. No costs.

Sd/-

Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

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To

1. The Chief Judicial Magistrate,
Motor Accidents Claims Tribunal,
Erode.
2. The Section Officer,
VR Section,
High Court, Madras.

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CSR 20.04.2020

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