

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.06.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2491 of 2010

Shanmugavadivel

.. Appellant/Petitioner

Vs.

1. Mumtaz Begum
 2. The Manager,
ICICI Lombard General Insurance Company Limited,
Having office at
3rd Floor, United Arcade,
Annamalai Nagar,
High Road, Thillai Nagar,
Trichy.
 3. S.Natarajan
 4. The Manager,
National Insurance Company Limited,
Having office at
Vigneswara building,
2/7, Pudukottai Road,
Trichy - 620 020.
- .. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 23.03.2010 made in M.C.O.P.No.285 of 2007 on the file of the Motor Accidents Claims Tribunal, Principal Sub Court, Mayiladuthurai.

For Appellant : Mr.S.Sounthar

For RR 1 & 3 : No appearance

For R2 : Ms.R.Sreevidhya

For R4 : Mr.D.Bhaskaran

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J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the award dated 23.03.2010 made in M.C.O.P.No.285 of 2007 on the file of the Motor Accidents Claims Tribunal, Principal Sub Court, Mayiladuthurai.

2.The appellant is the claimant in M.C.O.P.No.285 of 2007 on the file of the Motor Accidents Claims Tribunal, Principal Sub Court, Mayiladuthurai. He filed the said claim petition, claiming a sum of Rs.7,00,000/- as compensation for the injuries sustained by him in the accident that took place on 06.05.2007.

3.According to the appellant, on 06.05.2007 at about 10.00 A.M., while he was returning in his motorcycle bearing Registration No.TN 51 T 5283 along with one Rajasekaran as pillion rider on Memathur - Nalladai road, after loading the trees in a vehilce towards Memathur, near one Gunasekaran house, the driver of the car belonging to the 1st respondent, who was coming behind the appellant, drove the same in a rash and negligent manner and dashed on the appellant and caused the accident. In the accident, the appellant and pillion rider of the motorcycle were thrown out of the motorcycle and the appellant sustained multiple grievous injuries all over his body. The people who were near the place of accident, took the appellant to Krishna Hospital, Mayiladuthurai and admitted him as in-patient. At the time of accident, the appellant was aged 50 years and was doing Firewood and Timber Business and was earning a sum of Rs.12,000/- per month. Due to the injuries sustained by him in the accident, the appellant could not continue his work as he was doing earlier. Therefore, he filed the said claim petition, claiming a sum of Rs.7,00,000/- as compensation for the injuries sustained by him against the respondents 1 to 4, being the owner and insurer of the car and motorcycle respectively.

4.The 1st respondent, owner of the car filed counter statement and denied all the averments made by the appellant. According to the 1st respondent, the driver of the 1st respondent's car was not responsible for the accident. The nature of injuries mentioned in the claim petition is not correct. The 1st respondent's car was insured with the 2nd respondent-ICICI Lombard General Insurance Company Limited and only the 2nd respondent is liable to pay the compensation, if any granted by the Tribunal. 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 as against the 1st respondent.

5.The 2nd respondent-ICICI Lombard General Insurance Company Limited, being the insurer of the 1st respondent's car filed counter statement and denied various averments made by the appellant. The 2nd respondent denied the place, date and time of accident. The 1st respondent has not given any information to the 2nd respondent about the accident. Therefore, the 2nd respondent is not liable to pay any compensation to the appellant. In the F.I.R., it was mentioned that the vehicle bearing Registration No.TN 51 T 5283 was belonging to the appellant, but the appellant has stated that the said vehicle belongs to the 3rd respondent. Therefore, the 2nd respondent is now way connected with this case. The accident has happened only due to collusion of two motorcycles and hence, criminal case against the 1st respondent's driver was closed as Mistake of Fact. The alleged accident has occurred on 06.05.2007, but the F.I.R. has been filed only on 03.06.2007 and the appellant has not explained about the delay. The appellant has to prove his age, avocation, income, nature of injuries and period of treatment taken by producing valid documents. The injuries sustained by the appellant are simple in nature. In any event, the quantum of compensation claimed by the appellant is highly excessive and prayed for dismissal of the claim petition as against the 2nd respondent.

6.The 3rd respondent, being the owner of the Motorcycle bearing Registration No.TN 51 T 5283 filed counter statement and denied various averments made by the appellant. According to the 3rd respondent, he sold his TVS Star DLX motorcycle to the appellant on 30.05.2006 itself and only the appellant is the owner of the motorcycle and hence, he is not liable to pay any compensation to the appellant and prayed for dismissal of the claim petition as against the 3rd respondent.

7.The 4th respondent-National Insurance Company Limited, being the insurer of the motorcycle belonging to the 3rd respondent filed counter statement and denied various averments made by the appellant. According to the 4th respondent, the driver of the 1st respondent's car drove the same in a rash and negligent manner and dashed against the appellant and invited the accident and only the driver of the 1st respondent's car was responsible for the accident. Therefore, only the respondents 1 and 2 are liable to pay compensation to the appellant. 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 as against the 4th respondent.

8. Before the Tribunal, the appellant examined himself as P.W.1, Dr. Rajasekaran was examined as P.W.2 and twelve documents were marked as Exs.P1 to P12. On behalf of the respondents, two witnesses were examined as R.W.1 and R.W.2 and two documents were marked as Exs.R1 and R2.

9. The Tribunal, considering the pleadings, oral and documentary evidence, dismissed the claim petition holding that the appellant has not proved the manner of accident and the accident has occurred due to rash and negligent driving by the driver of the car belonging to 1st respondent.

10. Challenging the order of dismissal dated 23.03.2010 made in M.C.O.P.No.285 of 2007 and for granting compensation, the appellant has come out with the present appeal.

11. The learned counsel appearing for the appellant contended that the Tribunal failed to see that Police when closed the complaint, did not issue any notice to the appellant and no material was placed before the Court for having closed the complaint and issuing notice to the appellant. The Tribunal considering the evidence on record, Ex.P1/F.I.R, Ex.P3/Accident report and evidence of P.W.1, ought to have held that accident has occurred only due to rash and negligent driving by the driver of the car belonging to the 1st respondent. The Tribunal failed to see that motorcycle belonging to 3rd respondent driven by the appellant was involved in the accident and 3rd respondent as owner and 4th respondent as insurer of the motorcycle are liable to pay compensation and the Tribunal erred in exonerating the respondents 3 and 4 from their liability and prayed for allowing this appeal.

12. The learned counsel appearing for the respondents 2 and 4 separately made their submissions supporting the award passed by the Tribunal and prayed for dismissal of the appeal.

13. Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the 2nd respondent and the learned counsel appearing for the 4th respondent and perused the entire materials on record.

14. It is the contention of the appellant that the Maruthi car belonging to the 1st respondent, insured with the 2nd respondent was driven in a rash and negligent manner, dashed on the backside of the motorcycle driven by the appellant and caused the accident. Due to the accident, the appellant suffered multiple injuries all over his body. The appellant has filed claim petition against the respondents 1 and 2, who are the

owner and insurer of the Maruthi car respectively and respondents 3 and 4, who are the owner and insurer of the motorcycle driven by the appellant at the time of accident. It is the specific case of the appellant that Maruthi car belonging to the 1st respondent dashed on the backside of the motorcycle ridden by the appellant. When the appellant has taken such a stand before the Tribunal, the present contention of the appellant in the appeal that respondents 3 and 4 is owner and insurer of the motorcycle are liable to pay compensation is not maintainable.

15. From the materials on record, it is seen that the complaint was lodged by the pillion rider Rajasekaran after one month of the accident. The delay in lodging the complaint was not explained. It is the contention of the appellant and said Rajasekaran that in the accident, both of them were injured and appellant took treatment for the injuries. No reason is given by the appellant as well as the said Rajasekaran as to why the Hospital Authorities have not informed the Police or as to why they have not informed while they were taking treatment. Further, the appellant deposed that he was not aware of the Registration Number of the car which caused the accident and deposed that a red color car dashed on the backside of the motorcycle. The complaint was lodged by said Rajasekaran after one month of the accident and F.I.R. was registered based on the complaint. In the complaint, the said Rajasekaran has taken a stand due to the accident, both the appellant as well as the said Rajasekaran were thrown out from the motorcycle and on seeing this, one Vasu went in his motorcycle and caught hold of Maruthi car and the driver of the Maruthi car informed to give a complaint to the Police. The said Vasu noted down the Registration Number of the car and informed Rajasekar. There is no explanation as to why the said Vasu did not give any complaint to the Police immediately after the accident. Both the Rajasekaran and Vasu were not examined by the appellant. The said Vasu and Rajasekaran are best witnesses to prove that Maruthi car belonging to the 1st respondent was involved in the accident and due to rash and negligent driving by driver of the Maruthi car, the accident has occurred. Further, the Tribunal took note of the Motor Vehicle Inspector's report marked as Exs.P2 and P3. In the report, it was stated that there was no damage to the Maruthi car. It was stated that motorcycle was damaged in front side. The Tribunal considering the same, held that if really the Maruthi car dashed on the backside of the motorcycle, there must be damage in the front side of the car and backside of the motorcycle. The Tribunal also took note of the fact that appellant did not give explanation as to how the motorcycle was damaged in the front side. The Police after investigation has closed the case as mistake of fact. The Tribunal considering all the above materials has held that the

appellant failed to prove the accident, as alleged by him and dismissed the claim petition by giving cogent and valid reason. There is no error or perversity in the reasoning given by the Tribunal warranting any interference by this Court.

16.In the result, this Civil Miscellaneous Appeal is dismissed confirming the order dated 23.03.2010 made in M.C.O.P.No.285 of 2007. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1.The Principal Subordinate Judge,
Motor Accidents Claims Tribunal,
Mayiladuthurai.

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

C.M.A.No.2491 of 2010

PP (CO)
RMP (05/01/2021)



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