

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 02.06.2020

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.Nos.3416 and 3417 of 2010

Chinnadurai ... Appellant/Claimant in CMA No.3416 of 2010
Maheswari ... Appellant/Claimant in CMA No.3417 of 2010

Vs.

1. Pappammal

2. Bajaj Alliance Insurance Co., Ltd.,
Ponmani Tower,
No.1, Avarampalayam Road,
New Chithaapudur, Coimbatore

... Respondents in both the appeals

Civil Miscellaneous Appeals are filed under Section 173 of Motor Vehicles Act, 1988 to set aside the award passed by the learned Motor Accident Claims Tribunal cum Sub Court, Tiruchengode in M.C.O.P.Nos.362 and 363 of 2008 dated 30.03.2010.

For Appellants : Mr.C.Kulanthaivel
For Respondent : Mr.K.Padmanabhan for R1

C O M M O N J U D G M E N T

The present Civil Miscellaneous Appeals have been filed seeking to set aside the award passed by the learned Motor Accident Claims Tribunal cum Sub Court, Tiruchengode in M.C.O.P.Nos.362 and 363 of 2008 dated 30.03.2010.

2. Since the issues involved in both the appeals are interlinked, they are taken up together and a common Judgment is being passed.

3. The case of the claimants / appellants is that on 03.11.2005, while the appellants were travelling in the motorcycle bearing Regn. No.TN27R-6106 (M-80), the driver of Indica car bearing Regn.No.TN28 F 0009 [owned by the 1st respondent], had driven the vehicle in a rash and negligent manner and hit against against the claimants. Due to the said

accident, the appellants were thrown out from the motorcycle and sustained grievous injuries. Prior to the accident, the appellants were earning a sum of Rs.10,000/- each, but now, the appellants are not in a position to do the job as they were performing before the accident. Since the 1st respondent is the owner of the offending vehicle and the 2nd respondent is the insurer of the said vehicle, the claimants have claimed the compensation of Rs.3,00,000/- each against them.

4. The 2nd respondent / Insurance Company has filed a detailed counter before the Tribunal denying all the averments stated by the claimants. Further, in respect of the accident, a case has been registered in Cr.No.439 of 2005 under Sections 279 and 337 of IPC and the same was referred as 'mistake of fact' and final report was also filed. Moreover, the claimants have no valid driving license to drive the vehicle and the claimants have not arrayed the insurance company of the two wheeler as a party to this case, hence the claim is liable to be dismissed for non-joinder of parties. The order passed by the Tribunal is valid in law and does not require any interference in the hands of this Court.

5. The Tribunal after considering the pleadings, counter pleadings and materials available on record, had dismissed the claim petitions filed by the appellants / claimants. Aggrieved against the same, the appellants are before this Court.

6. The learned counsel for the appellants submitted that the Tribunal ought not to have dismissed the claim petitions on the ground of negligence in the absence of any independent conclusion and findings and based on criminal proceedings. Further, the Tribunal failed to consider the evidence of P.W.3, who is the eye witness to the accident and he clearly deposed that the accident has taken place only due to the negligence of the driver of the car, who applied sudden brake and hence the claimants are entitled for compensation. In support of his contention, he has relied on the Judgment of this Court in C.M.A.No.2701 of 2009 dated 03.10.2003 [Baskar V. Superintendent of Police, Namakkal and ors.] wherein it is held that the motorcycle of the claimant therein hit jeep belonging to the 3rd respondent therein. The claim petition was dismissed by the tribunal on the ground that case was referred to as mistake of fact. However, Tribunal instead of actively involving itself in ascertaining truth, has been carried away by report of mistake of fact and the appeal therein was allowed.

7. Per contra, the learned counsel for the 1st respondent denied all the averments stated by the claimants and reiterated the contentions averred before the Tribunal. The Motorcycle was

driven by the claimants in a rash and negligent manner behind the Indica Car and due to the condition of the road, the driver of the car had applied brake and the claimants, who were unable to control the motorcycle have dashed against the car, hence the negligence is on the part of the claimants only, therefore, seeks to dismiss the appeals filed by the appellants. In support of his contention, he has relied on the Judgment of this Court reported in 2019 (1)TN MAC 22 (DB) [United India Insurance Co., Ltd., V. S.Semmalar and others]

8. Though notice was ordered as early as on 03.01.2011 and 27.11.2012, there is no representation for the 2nd respondent.

9. Heard the learned counsel for the appellants and the learned counsel for the 1st respondent and perused the documents placed on record.

10. Before the Tribunal, on the side of the appellants, P.W.1 to P.W.3 were examined and Exs.P.1 to P.11 were marked. On behalf of the respondents, R.W.1 to R.W.3 were examined and Exs.R.1 and R.2 were marked.

11. On perusing the order passed by the Tribunal, it is seen that P.W.1, viz., Chinnadurai, during cross examination had stated that the driver of the car had driven the vehicle rashly and overtook the two wheeler driven by him and on account of the road condition, the driver of the car had applied sudden brake without any signal and he had dashed behind the car, thereby caused accident and the said contents were narrated in the complaint and the same was read out to him and he had affixed his signature.

12. That apart, P.W.2, Maheswari had stated before the Tribunal, during cross examination that she was the pillion rider in two wheeler. Further, when the said car, which was proceeding in front of their vehicle had applied brake without any signal, they have dashed against the said car. The Tribunal, based on the said evidence and taking note of the fact that the FIR was referred to as 'mistake of fact' had erred in fixing negligence only on the part of the claimants / appellants.

13. From the order of the court below, it is clear that the road is not in a good condition and the vehicles can only be driven slowly. Moreover, when the court below has referred the present case as 'mistake of fact', the Tribunal, instead of ascertaining the truth, was carried away by the said report and fixed the negligence on the claimants/appellants, which in the considered opinion of this Court needs interference in the eye of law. As per the version of P.W.1, when the driver of the car had overtook the appellants' vehicle and without any signal had

applied brake, the negligence is also on the part of the driver of the car. The negligence cannot be only fixed on the claimants.

14. Apart from the above, it is evident that when the accident has occurred on 03.11.2005, the insurance policy was in existence [from 25.07.2005 to 24.07.2006]. Also, the Judgment of this Court relied on by the learned counsel for the appellants [wherein in the said Judgment, several citations of Hon'ble Supreme Court was also cited] cited supra squarely applies to the case on hand.

15. In view of the aforesaid foregoings, this Court is inclined to remand the present cases in M.C.O.P.Nos.362 and 363 of 2008 dated 30.03.2010 to the Motor Accident Claims Tribunal cum learned Subordinate Judge, Thiruchengode to consider the same afresh without being influenced by any of the observations made this Court as well as made by them earlier and pass a reasoned speaking order on merits and in accordance with law after affording reasonable opportunities to the concerned parties as expeditiously as possible.

Accordingly, the present Civil Miscellaneous Appeals are disposed of. No costs.

Sd/-

Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

ssd

To

1. The Motor Accident Claims Tribunal
cum Sub Court,
Tiruchengode.

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

C.M.A.Nos.3416 and 3417 of 2010

VBA (CO)
GN (23/11/2020)