

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.03.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.NO.3772 OF 2010

AND

M.P.NO.1 OF 2010

The New India Assurance Co.Ltd.,
Third Party Cell,
No.69-70, Sheikpet Nadu Street,
Kanchipuram.

... Appellant/2nd Respondent

Vs.

1.Chinnapayyan ... 1st Respondent/Claimant

2.Saravanan ... 2nd Respondent/1st Respondent
(The 2nd respondent remained
exparte before the Tribunal)

Prayer:

This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 08.04.2010 made in M.C.O.P.No.57 of 2007 on the file of Motor Accident Claims Tribunal, Chief Judicial Magistrate, Chengalpattu.

For Appellant : Mr.K.Vinod for
M/s.Elveera Ravindran

For R1 : No appearance

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant/Insurance Company challenging the award dated 08.04.2010 made in M.C.O.P.No.57 of 2007 on the file of Motor Accident Claims Tribunal, Chief Judicial Magistrate, Chengalpattu.

2.The appellant/Insurance Company is the 2nd respondent in M.C.O.P.No.57 of 2007 on the file of Motor Accident Claims Tribunal, Chief Judicial Magistrate, Chengalpattu. The 1st

respondent filed the said Claim Petition claiming a sum of Rs.6,00,000/- as compensation for the injuries sustained by him in the accident that took place on 08.05.2007.

3. According to the 1st respondent, on the date of accident i.e., on 08.05.2007, the 1st respondent was riding his motorcycle bearing Registration No.TN 21 Q 8781 from S.P.Koil to Kolathur Village. When the said vehicle reached Periyar Nagar bus stand, a Tata Sumo Car bearing Registration No. TN 21 M 4615, belonging to the 2nd respondent insured with the appellant/Insurance Company, driven by its driver in a rash and negligent manner, dashed against the 1st respondent, as a result of which, the 1st respondent sustained grievous injuries. Therefore, the 1st respondent has filed the above claim petition claiming compensation against the appellant and 2nd respondent.

4. The 2nd respondent/owner of the car remained exparte before the Tribunal.

5.The appellant/Insurance Company filed counter statement denying the averments made in the Claim Petition and contended that the rider of the motorcycle drove the same in a rash and negligent manner and he is responsible for the accident. The car involved in the accident was not insured with the appellant at the time of the accident. The driver of the car did not possess driving license at the time of the accident. The 1st respondent has not impleaded the owner and insurer of the motorcycle and the claim petition is bad for non-joinder of necessary parties. Therefore, the appellant/Insurance Company is not liable to pay any compensation to the 1st respondent.

6.Before the Tribunal, the 1st respondent examined himself as P.W.1, one Dr.Kannan was examined as P.W.2 and one Pandi/Motor Vehicles Inspector was examined as P.W.3 and marked sixteen documents as Exs.P1 to P16. No oral and documentary evidence was let in, on the side of the appellant.

7.The Tribunal, considering the pleadings, oral and documentary evidence let in by the 1st respondent, held that the accident occurred due to rash and negligent driving by the driver of the car belonging to the 2nd respondent and directed both the 2nd respondent and appellant/Insurance Company being insurer of the said car to jointly and severally, pay a sum of Rs.2,38,965/- as compensation to the 1st respondent.

8.Against the said award dated 08.04.2010 made in M.C.O.P.No.57 of 2007, granting compensation to the 1st respondent, the appellant/Insurance Company has come out with the present appeal.

9.The learned counsel appearing for the appellant/Insurance Company contended that the Tribunal failed to consider the FIR wherein it has been stated that the accident has occurred only due to the involvement of the unknown Qualis Car. The Tribunal failed to appreciate that the 2nd respondent herein is friend of the 1st respondent and hence there was collusion between the respondents 1 & 2. The Tribunal erred in fixing the negligence based on the oral evidence of the 1st respondent when there was no documents to substantiate the said claim. The Tribunal erred in holding that the accident has occurred due to the involvement of the vehicle of the 2nd respondent without any basis. The Tribunal erred in holding that the 1st respondent suffered 35% disability and awarded compensation excessively under different heads and prayed for setting aside the award of the Tribunal. The learned counsel for the appellant in support of his contention relied on the following judgments:

(a) "2004 (2) TN MAC 101" "Civil Miscellaneous Appeal No.614 of 1995 - N.Sathidevi & Others Vs. V.Giridharan & Another & Civil Miscellaneous Appeal No.25 of 1997 - M/s.New India Assurance Company Limited Vs. Smt.N.Sathidevi & Others"

"8.From the above, it is clear that absolutely, there is no evidence available on record to establish that the vehicle of the fifth respondent in the appeal, had involved in the accident, except the confession of the driver of the said vehicle, before the Criminal Court. The order of conviction has been marked as Ex.A2 in this case."

(b) "2004 (2) TN MAC 115 (DB)" "C.M.A.(NPD) No.167 of 1999 Metropolitan Transport Corporation Ltd. Chennai Vs. G.Gnanam @ Gnanamoorthy & Cross Objection No.9 of 2000 G.Gnanam @ Gnanamoorthy Vs. Metropolitan Transport Corporation Ltd. Chennai"

"The Tribunal is not correct in relying on the penalty paid by the driver before the Criminal Court to fix the entire responsibility on the driver. Even if the driver is also a reason for the accident, he is liable to pay such penalty "

The Tribunal considering the nature of injuries, treatment taken by the 1st respondent, disability certificate and evidence of PW2, awarded compensation under different heads which are not excessive warranting interference by this Court.

10. Though notice has been served on the 1st respondent and his name is printed in the cause list, there is no representation either in person or through counsel.

11. Heard the learned counsel appearing for the appellant/ Insurance Company and perused the materials available on record.

12. It is the contention of the 1st respondent that while he was riding his motorcycle the driver of the Tata Sumo Car belonging to the 2nd respondent driven in a rash and negligent manner dashed against the motorcycle driven by the 1st respondent and caused the accident. In the accident, the 1st respondent sustained injuries. To substantiate the said contention, the 1st respondent examined himself as P.W.1 and marked Ex.P1/F.I.R. It is the contention of the appellant that the accident has occurred only due to rash and negligent riding by the 1st respondent. In the FIR, it has been stated that the accident has occurred due to involvement of unknown Qualis Car. The 1st respondent in collusion with the 2nd respondent has filed Claim Petition alleging that the Tata Sumo Car belonging to the 2nd respondent was involved in the accident to claim compensation from the appellant. In the FIR it has been stated that 1st respondent was injured by accident caused by a Qualis Car. The complaint was lodged by brother of 1st respondent based on the information received by him over phone. The complaint was not lodged by an eyewitness but based on information received over phone by the complainant. It is well settled that FIR is not the sole basis for fixing the negligence. More weightage must be given for the evidence let in by the parties before the Tribunal on oath. The appellant has taken a stand that the accident has occurred due to involvement of unknown Qualis Car but has not let in any evidence before the Tribunal to substantiate the said contention.

13. The Tribunal considering the evidence of P.W.1, P.W.3, F.I.R. and Ex.P16, the fact that the driver of the Tata Sumo Car surrendered before the Court, Motor Vehicle Inspector's Report and failure on the part of the appellant to let in any evidence to prove collusion between the respondents 1 & 2, held that the accident has occurred only due to rash and negligent driving by driver of the Tata Sumo Car belonging to the 2nd respondent. In view of the above findings of the Tribunal, the contention of the learned counsel for the appellant that the Tribunal directed the appellant to pay compensation only due to confession of the driver of the vehicle has no merits and the judgments relied on by the learned counsel for the appellant are not applicable to the facts of the present case.

14. In the result, this Civil Miscellaneous Appeal is dismissed and the amount of Rs.2,38,965/- awarded by the

Tribunal as compensation to the 1st respondent, along with interest and costs is confirmed. Both the appellant/Insurance Company and 2nd respondent are directed to deposit the award amount with interest and costs, jointly and severally, less the amount already deposited, if any, within a period six weeks from the date of receipt of a copy of this judgment. 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(CS V)

//True Copy//

Sub Assistant Registrar

mtl

To

1.The Chief Judicial Magistrate,
The Motor Accident Claims Tribunal
Chengalpattu.

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

+lcc to M/s.Elveera Ravindran, Advocate, S.R.No.24056

C.M.A.No.3772 of 2010
and M.P.No.1 of 2010

VBA(CO)
CS/17/04/2021

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