

IN THE HIGH COURT OF JUDICATURE AT MADRAS
Dated : 04.08.2020
CORAM:

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN
C.M.A.No.1284 of 2016
and
C.M.P.No.9922 of 2016

The Divisional Manager,
National Insurance Company Ltd.,
Puducherry. .. Appellant/2nd Respondent

/versus/

1.Vetrivel ..1st Respondent/Petitioner

2.Sundararajan .. Respondents /1st Respondent

Prayer: Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 16.02.2016 and made in M.C.O.P.No.2881/2014 on the file of the Motor Accident Claims Tribunal, Cuddalore (Special Sub-Ordinate Court, Cuddalore).

For Appellant : Mr.S.Vadivel

For R1 :Not Ready Notice
R2 :Served-NA

J U D G M E N T

(The case has been heard through video conference)

This appeal is preferred by the Insurance Company aggrieved by the award passed by the Motor Accident Claims Tribunal, Special Subordinate Court, Cuddalore.

2.Brief facts of the case is that on 08.06.2014, at about 18.15 hours, when the claimant Vetrivel was travelling in Hero Honda Splendor motor bike bearing Reg.No.PY-01-CA-2046, as a pillion rider, near grave yard at Visupallam Colony on the Cuddalore to Viruthachalam Main Road, due to rash and negligent driving of the motor bike rider, the vehicle hit the road side stone and turned turtle, Vetrivel sustained injury on the mandible fracture on the right ribs, fracture on the left hand, fracture on the right leg injuries on the left toe, all over body grievous nature. He was admitted in the Government

Hospital, Cuddalore and after that he was admitted in Kurinjipadi Government Hospital for treatment. Arraying the owner of the motor bike as the first respondent and its Insurance Company as the 2nd respondent, a claim petition for compensation of Rs.5,00,000/- was filed.

3.The Insurance Company in its counter repudiated the claim on the ground that the facts stated by the petitioner is contrary to truth. The accident took place when the petitioner was driving the vehicle and hit by an unknown lorry. This fact is reflected in the Accident Register Copy. Contrary to the contemporaneous document, for the sake of getting compensation, false averments are made suppressing the material facts. The Police, on investigating the case, has closed the complaint as mistake of fact. Without impleading the above vehicle and the insurer, the petitioner/claimant has invented a story as if the two wheeler was driven by its owner Sundarajan in which he was travelling as a pillion rider and due to rash and negligent driving of Sundarajan, the two wheeler hit the road side stone and turned turtle. Since the claim petition bristles with suppression of material facts and on the ground of non-joinder of necessary party, the same is to be dismissed. Further, the claim of Rs.5,00,000/- as compensation has also been questioned as excessive.

4.Before the Tribunal, the claimant Vetrivel and the Doctor, who gave Disability Certificate were examined as PW-1 and PW-2. 11 exhibits were marked. On the side of the respondent, one Gunasekaran, Grade-I, Police Constable was examined as RW-1. 3 exhibits were marked. The Tribunal rejected the defence of the Insurance Company for want of proof and awarded a sum of Rs.1,51,886/- as compensation to the claimant.

5.The break of figure for the compensation is as below:-

Sl. No.	Particulars	Amount Rs.
1.	Disability	60,000-00
2.	Medical bill Exhibit P-6	43,886-00
3.	Pain and Suffering	30,000-00
4.	Transport	10,000-00
5.	Extra Nourishment	5,000-00
6.	Damages caused to clothing & articles	3,000-00
Total		1,51,886-00

6.The Insurance Company, aggrieved by the above award, has preferred the appeal contending that the Tribunal has totally

ignored the evidence of RW-1 (Gunasekaran, Grade-I Police Constable) and three exhibits viz., R1 to R3 marked on behalf of the respondents. The evidence adduced by the respondents would amply show that the accident as narrated by the claimant in the claim petition is false and imaginary. The Police, after investigation, has closed the complaint as mistake of fact. The final report (Ex.R1) and the order passed by the Judicial Magistrate (Ex.R2) were not at all considered by the Tribunal to reject the case of the claimant. Ex.P3, which is the Accident Report itself would clearly show that the accident has not taken place the manner in which the claimant has narrated. However, the Tribunal erroneously accepted false case of the claimant and awarded Rs.1,51,886/- which is liable to be set aside.

7.Heard the learned counsel appearing for the appellant and the documents filed in support of the parties perused.

8.The negligence asserted by the claimant is denied by the Insurance Company. Two different version has been placed before the Court regarding the manner in which the accident occurred. The Tribunal has accepted the version of the claimant since there is no evidence to show that the injury sustained by the claimant was self-inflicted injury. It is accepted fact that the injury was sustained in a road accident. The First Information Report (Ex.P1) is in support of the claimant. Though the Police on investigation closed the complaint as mistake of fact, no contra evidence was let in by the respondent to attribute the negligence on the part of the claimant. So, taking into consideration that Chapter 10 and 11 of the Motor Vehicles Act, 1988, is the beneficial legislation, in this case the claimant has proved the accident and injury sustained by him. The contention of the Insurance Company that the accident was occurred due to negligence of the claimant, is not proved. Therefore, the award passed by the Tribunal namely, Special Subordinate Court, Cuddalore, is confirmed as there is no merit in this appeal. Hence, this appeal is liable to be dismissed.

9.In the result, this Civil Miscellaneous Appeal is dismissed. The award passed by the Tribunal, namely, the Motor Accident Claims Tribunal(Special Subordinate Court), Cuddalore made in M.C.O.P.No.2881 of 2014, dated 16.02.2016 is confirmed. No order as to costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(co)

//True Copy//

Sub Assistant Registrar

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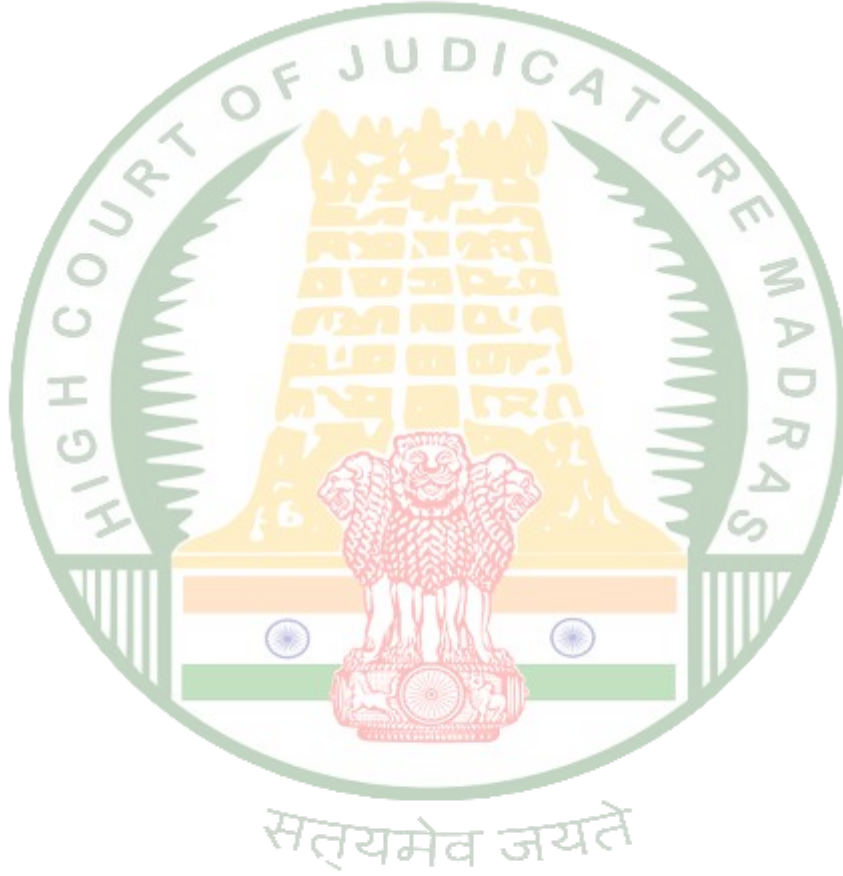
To

1.The Motor Accident Claims Tribunal,Special Subordinate Court,
Cuddalore.

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

C.M.A.No.1284 of 2016
and
C.M.P.No. 9922 of 2016

A.SK(06.01.2021)



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