

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.02.2020

C O R A M

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.NO.2725 OF 2012

Bajaj Allianz General Insurance Co.Ltd.
No.25/26, College Road, Nungambakkam,
Chennai

.. Appellant

Versus

1.S.Susai Durairaj S/o. S. Susai Doss,
2.M.Joseph Antony

.. Respondents

Prayer:

Civil Miscellaneous Appeal filed against the order and decree dated 07.03.2012 made in M.C.O.P.No.2969 of 2007 on the file of the Motor Accident Claims Tribunal, IV Court of Small Causes, Chennai.

For Appellant : Mr.G.Vasudevan

For Respondent-1 : Mrs.Subadra
(For M/s.M.Malar)

For Respondent-2 : No Appearance

JUDGMENT

This appeal has been filed by the Insurance company/appellant herein against the Award and Decree in M.C.O.P.No.2969 of 2007 dated 07.03.2012 on the file of the Motor Accident Claims Tribunal, IV Court of Small Causes, Chennai.

2. The brief facts of the case are as follows:

2.1. On 11.02.2007 at about 7.30 pm while the claimant/1st respondent herein was riding his motor cycle bearing registration No.TN-05-S-3393 from Anna Nagar to Kodungaiyur at perambur Terminus, it was stated that the 2nd respondent driving his Hero Honda Splendor Motor Cycle bearing Registration No.TN-05-1958 in a rash and negligent manner dashed against the claimant's vehicle thereby he was sustained grievous injuries. In view of the accident, the claimant filed a claim petition in

MCOP No.2969 of 2007 before the Motor Accident Claims Tribunal, IVth Court of Small Causes, Chennai, seeking for compensation of Rs.10,00,000/- (Rupees Ten Lakh Only) for sustaining injuries in the road accident. After trial, the claimant/1st respondent was awarded a sum of Rs.3,21,200/- (Rupees Three Lakh Twenty One Thousand and Two Hundred Only) as compensation by fixing liability on the Insurance Company/appellant herein who is the insurer of the 2nd respondent's vehicle. Aggrieved by the aforesaid award, the Insurance company/appellant has filed the present appeal questioning the manner of the accident and liability on their side.

3.The learned counsel for the appellant would submit that the claimant was awarded by the Tribunal having fixed the liability on the Insurance Company/appellant herein who is the insurer of the 2nd respondent's motor vehicle bearing registration No.TN 05 M 1959, when there was no any involvement of the said motorcycle in the said road accident. While the accident had happened on 11.02.2007, the FIR was registered on 15.02.2007 by one relative of the 1st respondent, ie. after three days. Therefore, it is liable to be dismissed on the ground that formal FIR of the incident was lodged belatedly and it clearly shows that the claimant's claim against the 2nd respondent is imagine and fictitious after considering with a delayed FIR. Further, despite Ex.R2 - Accident Register Copy did not have any reference about the aforesaid vehicle for having led to the accident and manner of the accident alleging on the aforesaid vehicle, the tribunal has fixed the liability on the insurer of the aforesaid vehicle driven by the 2nd respondent to pay compensation to the claimant/1st respondent herein. Even thereafter the police authorities closed the FIR as Mistake of fact only after proper investigation and examining the witnesses concerned as proved by R.W.1 and Ex.R1, and the motor accident investigation report shows that there was no damage to the vehicle to be stated as offending vehicle, while only damage was to the claimant's vehicle, the Tribunal has fixed the liability on the Insurance company/appellant herein who was the insurer of the vehicle which was stated being driven by the 2nd respondent herein. Thus, without considering the aforesaid facts, the Tribunal had erroneously come to the conclusion by fixing liability on the insurance company/appellant herein, hence, the award passed by the Tribunal is not sustainable and liable to be set aside.

4. Per contra, the learned counsel for the respondent1/ injured claimant would submit that the tribunal after appreciating oral and documentary evidence rightly held that the claimant/1st respondent herein has sustained grievous injuries in the said road accident with the involvement of the offending vehicle bearing registration No.TN 05 M 1958. Further, since the

claimant was not in a position to make complaint against the 2nd respondent at the time of the accident ie.11.03.2007 soon after the accident, he was admitted to the Hospital for treatment by his family members on the same day. Hence, the claimant had lodged complaint against the 2nd respondent only on 15.03.2007. In the FIR, it is clearly stated that the accident took place due to the rash and negligent driving of the 1st respondent only. It is further submitted by the learned counsel that even though the FIR had been closed as mistake of fact, its report was not sent to the Criminal Court concerned as per law. So that, it would not be considered by the the Tribunal that the accident could not be occurred if only the FIR had been closed against the 2nd respondent as mistake of fact. Further if there was no contra evidence against the evidence of P.W.1 and the 2nd respondent was not examined during the trial, the claimant/1st respondent was rightly awarded compensation a sum of Rs.3,21,200/- confirming the facts and manner of the accident occurred due to rash and negligent driving of the 2nd respondent herein. To support her argument, she has placed reliance on the Judgment of the Apex Court in the case of "Ravi Vs. Badrinarayan and others reported in 2011(1) TN MAC 326 (SC) and Judgment of this Court in the case of "D.Selvarasu Vs. D.Rajamanickam and others reported in 2013(1) TN MAC 530.

5. Heard the learned counsel for the appellant and the learned counsel for the 1st respondent as well as perused the material available on record.

6. On consideration of the facts and circumstances of case and arguments made by the counsel of both parties, it is seen that the complaint came to be lodged by the brother-in-law of the petitioner/ 1st respondent herein after three days of alleged accident wherein he did not say the details of the vehicle involved in the accident and date of the accident before the investigating officer. On perusal of the Accident register, it does not show that the manner of the accident and no reference was made about the involvement of the motor vehicle in the accident. Further, the learned counsel for the 1st respondent would submit during the argument for the question of delayed FIR that the injured was unconscious at the time of accident. But, on perusal of Accident Register, it is stated that 1st respondent/injured was in conscious status at the time of the admission in the hospital whereas the reason of delayed complaint by the relative of the petitioner is not made out of the case. The Tribunal has come to the conclusion after corroborating the oral evidence of P.W.1, Ex.P1, Attested Copy of FIR. But, the FIR was closed as a mistake of fact. As the complaint in Crime No.102/2007 filed by the petitioner against the 2nd respondent was closed as mistake of fact, the question of liability would not rise against the 2nd respondent as well as

insurer of the vehicle. Further, it is stated that the Motor Vehicle Inspector recorded that except the damages made in the injured vehicle, there was no damages in the offending vehicle. In the above said Judgments, which are placed before this Court for reliance, since the oral and documentary evidence let in by the rider of the offending vehicle was contrary to the fact of case, the Hon'ble Supreme Court and this Court supported the claim of the claimant. But, in this case, even though the accident was happened and the claimant sustained injuries, it is clear that the details of the manner of the accident and involvement of the vehicle were not recorded properly in the evidence and the Crime case lodged against the 2nd respondent was also closed as mistake of fact after proper investigation on the side of the Commissioner of Police. Therefore, when the involvement of the vehicle in the accident is not proved beyond any doubt by the claimant/1st respondent herein, the liability cannot be fixed on the Insurer of the vehicle/appellant herein.

12. In the result, the appeal is allowed. Accordingly, the impugned award passed by the Tribunal is set aside hereby. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

lbm

To:

1. Motor Accident Claims Tribunal,
IV Court of Small Causes, Chennai.

Copy To

The Section Officer,
V.R.Section, High Court,
Madras.

+1cc to Mr.G.Vasudevan, Advocate, S.R.No.15353
+1cc to Mrs.Subadra, Advocate, S.R.No.15432

C.M.A.No.2725 of 2012

VSNII (CO)
CS/08/01/2021