



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 08.10.2020

Pronounced on: 14.10.2020

Coram::

The Honourable Dr.Justice G.Jayachandran

C.M.A.No.985 of 2016

Eswaran, S/o.Raj,
No.4/157, Anna Nagar, Minnampalli,
Namakkal Taluk and District. ...Appellant/claimant

/versus/

1. Velmurugan, S/o.Krishnasamy,
No.4/199, New No.4/136, Velliampalayam,
Sembianallur, Avinasi, Coimbatore District.
2. The Manager, ICICI Lombard General Insurance Co Ltd.,
No.5, United Arcad, 3rd Floor, Annamalai Nagar,
Karur Bypass, Trichy - 18. ... Respondents/Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, praying to set aside the judgment made in M.C.O.P.no.142 of 2009 on the file of the Motor Accident Claims Tribunal, Subordinate Court, Namakkal, dated 23.07.2015.

For Appellant : Mr.C.Kulanthaivel,

For R2 : Mrs.R.Sreevidhya,

For R1 : ex parte

JUDGMENT

(The case has been heard through video conference)

The Appeal is preferred by the vehicle owner aggrieved by the dismissal of his claim petition filed for the damages caused to the vehicle during the accident involving multiple vehicles.

2.The case of the Appellant is that, on 26/09/2008 at about 8.15 a.m, when his lorry bearing registration No.TAN 3496 proceeding from Thiruchur to Namakkal, near Vaniyamparai Iron Bridge, Panajcherri Village, Thiruchur District Beechi Police Station Limit, a lorry bearing registration No.TN-37-AQ-1641 came from behind rashly and hit his lorry proceeding ahead. Due to the impact, the driver of the lorry lost his control and hit the nearby tree standing on the northern side of the road. In



the said accident, the lorry of the claimant got damaged extensively on the front and rear side. Alleging negligence on the lorry (TN-37-AQ-1641) driver who hit his lorry (TAN 3496), claim petition filed for compensation of Rs.10 lakhs, which includes expenses incurred to repair the vehicle and loss of income during the repair period. The claim petition was filed against the owner of the lorry bearing registration No.TN-37-AQ-1641 and its insurer.

3. The Insurance Company filed counter stating that, the claim petition is bad for non-joinder of necessary party namely the insurer of the claimant's lorry. For own damage, the insurer of the vehicle which got damaged in the accident is responsible to indemnify the loss of the insured. Even otherwise for contributory negligence to apportion the loss, they are necessary parties. Further, the damages claimed is excessive and disproportionate.

4. Before the Tribunal, the claimant Exhibited 9 documents and examined 3 witnesses. However, the Tribunal dismissed the claim petition for the following reasons:-

a).As per F.I.R given by the driver of the Tata Indica car KL-49-2487, whose car also got damaged in the accident, the accident has occurred due to the rash and negligence of the claimant's lorry driver. Though, in the final report, the police has arrayed the driver of the lorry bearing registration No.TN-37-AQ-1641, as the tortfeasor, the Criminal prosecution has not reached finality.

b).The Motor Vehicle Inspector report for the claimant vehicle not produced. The damage caused to the lorry in the accident is not established. The assessor report and photographs relied by the claimant not proved to the satisfaction of the Tribunal that they are the damage caused during the accident occurred on 26/09/2008.

c) The claimant vehicle TAN 3496 is insured under National Insurance Company with coverage period between 19.12.2007 and 18.12.2008. There is no evidence to show whether the claimant has informed its insurer about the accident and whether any investigator appointed by the National Insurance Company assessed the damage to the vehicle. P.W-2 examined by the claimant is not the assessor authorised by the National Insurance Company under which the vehicle was insured, hence his report is not reliable.



5. The Learned Counsel for the appellant/claimant submitted that the Tribunal erred in not considering the final report marked as Ex.P-3. Tom Joseph, the first informant who was coming from the East direction saw the claimant vehicle coming from the West in high speed and hit the tree. He had not seen the offending vehicle TN-37-AQ-1641 coming behind the claimant vehicle which hit the rear of the claimant vehicle. So, he has wrongly implicated the driver of the claimant vehicle. Only during the investigation, the police had come to know about the cause of accident and had filed the final report (Ex.P-3) against the driver of the tanker lorry bearing registration No.TN-37-AQ-1641.

6. The Learned Counsel for the Appellant would state that the accident as narrated in the final report and the photographs marked as Ex.P-9 series along with the survey report Ex.P-4 are sufficient proof that the vehicle was hit on the rear side by the Tanker lorry TN-37-AQ-1641. Due to that impact, the driver of the lorry TAN 3496 lost control and hit the nearby tree and uprooted it. Then, turned right to hit back the tanker lorry and then moved forward and hit against a Tempo bearing registration No.KL-17-C-3269 caused injuries to the occupants and lastly hit the Tata Indica car bearing registration No.KL-49-2487.

7. On considering the material placed before this Court, it is clear that the claimant's lorry bearing registration No.TAN 3496 was hit by tanker lorry bearing registration No.TN-37-AQ-1641. In the said impact, the claimant's lorry had hit a tree and other vehicles causing chain of collusion. The first information was against the driver of the claimant's lorry alleging rashness. However, in the final report, the driver of the tanker lorry has been shown as accused. From the manner in which the accident occurred, it is not difficult to hold that the claimant's lorry had sustained damage. Since, the claimant had failed to produce the motor vehicle inspector report and had not intimated his insurance immediately to assess the damage, the present report Exhibited as Ex.P-4 and the supporting documents Ex.P-7 to Ex.P-9 were not been considered by the Tribunal. It was also not certain whether the claimant had been indemnified by his insurer under own damage coverage.

8. This Court also notice from the exhibits, for the accident occurred on 26.09.2008, the F.I.R was registered on the same date and after investigation, the police had filed the final report on 13.10.2018, charging the driver of the 1st respondent. The assessor engaged by the claimant has given his survey report on 23.01.2009 assessing damage of Rs.1,53,200/-. The bills produced by the claimant for Rs.1,68,200/- are from



26.09.2008 to 19.12.2009. The Claim petition presented before the M.A.C.T, Namakkal, on 08.04.2009 for Rs.5,00,000. It is thus evident that, bills are fudged for getting high compensation. As pointed out by the Tribunal, the claimant has not produced documents which are available in the natural course of events. There is no evidence to show that the photographs Ex.P-9 was taken at the time of accident.

9. In the above said circumstances, from the final report, this Court finds that, the driver of the claimant lorry had not stopped with hitting the tree but had hit the tanker lorry, a tempo van and Tata Indica car. Unless, he was also reckless, multiple collusion of vehicles is not possible. Therefore, he has also contributed to the accident. Taking note of the above fact and the fact that subject vehicle was 20 years old at the time of accident, compensation of Rs.40,000/- is awarded. The award amount will carry interest at the rate of 7.5% from the date of filing the petition (08.04.2009) till the date of realisation.

10. The Second respondent/insurance company is directed to deposit the award amount of Rs.40,000/- with interest at 7.5% within a period of 12 weeks from date of receipt of a copy of this Order. The claimant/appellant is permitted to withdraw the amount, on submission of certificate from his insurer (National Insurance Company, Namakkal,) that no compensation claimed or received for the damage sustained in the road accident dated 26.09.2008 in the policy No.651300/31/0776700004/95 for his vehicle TAN 3496 under own damage clause.

11. In the result, the Civil Miscellaneous Appeal is Allowed. No order as to costs.

Sd/-
Assistant Registrar (CS-VIII)

//True copy//

Sub Assistant Registrar

bsm

To,

1.The Motor Accident Claims Tribunal,
Subordinate Court, Namakkal.



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

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+1cc to Mr.C.Kulanthaivel, Advocate SR.No.34131

C.M.A.No.985 of 2016

AD (CO)
GMY (09/09/2021)