

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.03.2020

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

C.M.A.No.696 of 2020

Kannan

.. Appellant/Petitioner

Vs.

1.A.Murugesan

2.National Insurance Company Limited,
Divisional Office,
No.74/A - Paramathi Road,
Namakkal Post & District.

3.National Insurance Company Limited,
Rajaji Street, Kangeyam Post & Taluk,
Thiruppur District.

... Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to set aside the decree and judgment dated 4th September 2019 made in M.C.O.P.No.305 of 2018 on the file of Motor Accident Claim Tribunal / The Subordinate Judge, Kangeyam, Thiruppur District.

For Appellant : Mr.S.Silambuselvan

JUDGMENT

The civil miscellaneous appeal is filed against the judgment and decree dated 04.09.2019 passed in M.C.O.P.No.305 of 2018.

2. The accident occurred on 07.02.2014 at about 11.00 a.m at Velur to Jedarpalayam Main Road near Pandamangalam. Velur Police registered a case in Crime No.102/14 U/S 279 337 I.P.C.

3. The claimant has stated in the claim petition that his Vehicle got damaged on account of the accident. As regarding the injuries, no details are provided in the claim petition. The

Tribunal adjudicated the issues with reference to the claim petition filed by the appellant/claimant. Perusal of the findings reveals that the appellant has not established the factum regarding the accident itself. This apart, the claimant has not made clear, whether the policy is a third party policy or own damage policy. Even the policy coverage has not been established before the Tribunal, the Tribunal was of the opinion that no further steps are to be taken for awarding compensation. The narration of facts reveals certain vital contradictions, so as to disbelieve the factum regarding the accident. The Tribunal categorically appreciated the evidences and documents produced by the appellant/claimant. Burden is on the claimant to establish and to prove that the accident occurred in the manner narrated in the claim petition. The damage to the Vehicle belongs to the claimant occurred only due to the rash and negligent driving of the 1st respondent and therefore, the claimant ought to have established regarding the negligence committed by the 1st respondent, so as to prove the accident. The version set out by the claimant is that he had parked his car on the left end of the road and the 1st respondent is said to have driven his car in a rash and negligent manner and thereby caused the accident, dashing as against the petitioner's car. However, the Tribunal found that the rough sketch even not produced before the Tribunal. The Tribunal would have assessed the claimants contention, if the rough sketch is produced and in the absence of rough sketch, the Tribunal was not in a position to ascertain the factum regarding the accident. The scene of occurrence is necessary since FIR has been registered and the petitioner is able to place the observation mahazar, as well the Motor Vehicle Inspector's Report for the two vehicles involved in the case as Ex.P2 to Ex.P4. If observation mahazar is prepared, then naturally, a rough sketch must have been prepared by the Police at the time of investigating the crime registered and the offences for which the 1st respondent has been arrayed as an accused in the criminal case. The Subsequent details of the case namely the charge sheet and what was the result of this crime is also not made available to the Tribunal. In the absence of all these details, the Tribunal arrived a conclusion that the petitioner has not established the factum regarding the accident in the manner narrated in the claim petition.

4. It is relevant to extract the following paragraphs, wherein the Tribunal arrived certain findings, which all are vital:

"11. The petitioner is able to provide the policy number and the period of policy for the 1st respondent's vehicle as well with regard to his vehicle. Both the vehicles as per the petition

details, are insured with the same insurance company, though of a different branch. The petitioner who has approached this tribunal for the damages of his vehicle in the alleged accident, has not produced the copy of his policy since it is very much necessary to know whether he had been insured to cover 3rd party alone or covered his own damages also. Only if negligence is fastened on the offending vehicle that is 1st respondent, then the petitioner can tax the policy of that vehicle, that is the 2nd respondent herein. As this tribunal had already generated doubt regarding the way, the manner accident is said to have occurred and as it has not been established that the 1st respondent was the negligent driver and assuming that the offending vehicle is not negligent then the petitioner has to workout his remedy under this policy. Therefore, again it is pointed out that the details of the petitioner's policy is very much needed at this juncture, since it is not clear whether it was 3rd party policy or own damage policy. These aspects have not been proved and the actual damages incurred, what has been paid by the petitioner out of his hand there is no single piece of document to show that amount has been paid by the petitioner.

12. Further more from the Motor Vehicle Inspectors Report, especially of the petitioner's vehicle which is Ex.P3, as per the petitioner he is said to have parked his vehicle on the road and the 1st respondent had dashed the rear of his car. So even imagining for a second the scene of the accident, the petitioner's car was dashed from behind and naturally the damage for his car must be to his rear portion, while the 1st respondent's car must have damages to the front portion.

13. Considering Ex.P3 relating to the petitioner's car, in column 12 the damages sustained by the vehicle is noted by the Motor Vehicle Inspector. In the said damages referred, the rear portion do not raise any doubt but the two damages pointed out, one the front Bumber broken and Bonnet assembly dented, second, the front Wind Screen Glass broken, raises a doubt, especially the front bumper broken is the one 'damage' which again questions the matter in which the accident could have occurred. This raises a doubt that the accident could not have occurred as alleged by the petitioner. In these circumstances, the petitioner has to prove that the

accident had occurred in the manner pleaded by him and that indeed the 1st respondent was the sole reason for the accident, the first respondent's negligence was the culprit for this damage. The petitioner has failed to establish in this regard and hence, by way of this petition, the petitioner cannot claim any amount."

5. This being the findings of the Tribunal, this Court do not find any infirmity or perversity as such. The appellant/claimant has miserably failed to establish the factum regarding the accident as narrated in his claim petition and therefore, this Court is not inclined to entertain the appeal.

6. Accordingly, the judgment and decree dated 04.09.2019 passed in M.C.O.P.No.305/2018 is confirmed and consequently, C.M.A.No.696 of 2020 stands dismissed. No costs.

-s/d-
Assistant Registrar

True Copy
Sub-Assistant Registrar

Kak

To

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

2.The Subordinate Judge,
(Motor Accidents Claims Tribunal),
Kangeyam, Thiruppur District.

+1 cc to Mr.S.Silambuselvan Advocate sr21771

C.M.A.No.696 of 2020

mr(co)
aa10/11/2020

4/4