



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.02.2020

CORAM:

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.Nos.319 to 332 of 2014

A.Selvi	...Appellant/	Petitioner in C.M.A.No.319/2014
D. Radhika	...Appellant/	Petitioner in C.M.A.No.320/2014
A. Sengiammal	...Appellant/	Petitioner in C.M.A.No.321/2014
M. Parvathy	...Appellant/	Petitioner in C.M.A.No.322/2014
M. Muthulakshmi	...Appellant/	Petitioner in C.M.A.No.323/2014
M.Navaneetham	...Appellant/	Petitioner in C.M.A.No.324/2014
K.Kirubavathy	...Appellant/	Petitioner in C.M.A.No.325/2014
V. Rajammal	...Appellant/	Petitioner in C.M.A.No.326/2014
G. Krishnaveni	...Appellant/	Petitioner in C.M.A.No.327/2014
A. Thannammal	...Appellant/	Petitioner in C.M.A.No.328/2014
B. Jayamani	...Appellant/	Petitioner in C.M.A.No.329/2014
M. Valli	...Appellant/	Petitioner in C.M.A.No.330/2014
S. Bhavani	...Appellant/	Petitioner in C.M.A.No.331/2014
R. Manjula	...Appellant/	Petitioner in C.M.A.No.332/2014

Vs

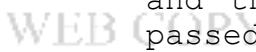
1.The Manager,
Chandrasekarendra,
Saraswathi Viswa Maha Vidyalaya
Deemed University,
Enathur Village and Post,
Kancheepuram Taluk and District.

2.The Divisional Manager,
New India Assurance Company Ltd.,
Kancheepuram. ... Respondents/
Respondents in all CMAs

Prayer in C.M.A.No.319 to 332 of 2014: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 to allow the above Civil Miscellaneous Appeal and set aside the judgment and the decree dated 12.10.2012, made in M.C.O.P.Nos.306, 307, 310, 311, 312, 313, 314, 315, 319, 320, 321, 350, 368 and 552/2009 respectively on the file of the Motor Accident Claims Tribunal, (Sub Court), Kanchipuram.

For Appellant : MR.C.Prabakaran
in all CMAs

For Respondents: R1- No appearance
in all CMAs : M/s.K. Thirunavukarasu for R2





adduced any oral or documentary evidence to prove that the crime in respect of the subject matter of the accident was closed as mistake of fact by the police. The same has not even marked as a document and no police officer was examined to this specific case, since the entire issue rest upon the same. Therefore, dismissal of the claim by the tribunal is unsustainable in law and the same is liable to be set aside. He has also placed reliance on the judgment of this Court in New India Assurance Co.Ltd., Chennai Vs. K.Kasthuri & others reported in 2010 (2) TNMAC 662 (mad). Without considering all these aspects, the Tribunal has erroneously dismissed the claim petition and hence, he prayed for allowing the appeal.

7.Per contra, the learned counsel appearing for the second respondent/Insurance company contended that there is no documentary evidence before this Court to substantiate all these facts. Further, to prove the treatment taken by the appellants and the alleged disability, there is no documentary evidence. To prove partial permanent disability, there is no doctor's certificate before this Court till today and as such, the alleged partial permanent disability is not true and correct. The vehicular records like R.C., permit, licence and driving licence of the 1st respondent's vehicle bearing Regn.No.TN21D9842 are not in order and as such, the second respondent is not liable to pay any compensation to the claimants.

8.Heard the learned counsel appearing for the appellants as well as the learned counsel appearing for the second respondent-Insurance Company and perused the materials available on record.

9. It is seen that the in the counter filed, the respondents have not adduced any oral and documentary evidence to prove that the criminal in respect of the subject matter of the accident was closed as mistake of fact by the police. The same was not even marked as a document and no police officer was examined to this specific case, since the entire issue rest upon the same. The appellants have admitted that they cannot say anything about the occurrence and hence, the Tribunal has rejected the claim of the appellants. The Tribunal has rejected the contention and claim of the appellants on the ground that the police has closed the matter as mistake of facts, which needs interference. The decision rendered by a Single Judge of this Court in New India Assurance Company Limited, Chennai. Vs. K.Kasthuri and others reported in 2010(2) TN MAC 662 (Mad), the learned Single Judge of this Court held that in the normal course, if there was any doubt regarding the involvement of the vehicle in an accident, the Insurance Company would engage an Investigator to find out the manner of accident which apparently has not been done in the present case."



and the relevant paragraphs are extracted hereunder for ready reference:

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"37. In the above legal background and on the facts of the present case, a duty is cast on this Court to find out as to whether the claimants, irrespective of the charge sheet have proved the involvement of the vehicle and the negligence of Bajaj M80 Motorcycle bearing Registration No. TN 07 W 3402. Admittedly, in Exhibit P-1-FIR, Exhibit P-3-Accident Register and Exhibit P-4-Rough Sketch of the place of occurrence, the registration number of the vehicle was not given by the complainant or the person, who took the injured to the hospital. However, unlike in the reported case, relied on by the learned counsel for the appellant-Insurance Company, there is no inordinate delay in lodging the FIR, as it is evident from Exhibit P-1-FIR that the accident had occurred at 11.55 Hours, and on the same day around 17.00 Hrs., a complaint had been lodged with the Police, Traffic Investigation Wing. Therefore, at this juncture, neither the informant to the Police or Mr. G. Rajaiyyan, motorcyclist and the pillion rider, Sabapathy, who admitted the injured in the hospital, were not in a position to furnish the registration number to the claimants or to the Police. However, the police, on investigation, has laid Exhibit P-3-Charge sheet against one Mr. Balaji, rider of Bajaj M80.

42. An accident could have been witnessed by many people, but it cannot be expected that all of them would go to the Police Station to lodge complaint. In the case on hand, one Mr. Rajaiyyan, had already lodged a complaint with the Police. During the course of investigation, it is for the Police to collect materials, statement from the concerned and prepare a final report, involving the offending vehicle and its driver.

43. Again, it is not necessary that all those, who had witnessed the accident. Should be examined as witnesses before the Criminal Court. It is for the Police to collect the best evidence for recording conviction against the offender, as strict proof of evidence is required only before the Criminal Court. In such view of the matter. If the Police had chosen not to examine P.W.2, as one of their



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witnesses before the Criminal Court, that cannot be put against the claimants as one of the reasons to discard his evidence let in before the Claims Tribunal. It is not also necessary that those, who are included as witnesses by the Police before the Criminal Court should also be examined before the Claims Tribunal for arriving at the conclusion of negligence. Needless to say that the standard of proof required is entirely different from the Criminal Court.

44. At this juncture, it is useful to extract the observations of the Division Bench of this Court in *Oriental Insurance Co. Ltd. V. K. Balasubramanian* (supra), wherein, this Court held as follows:

"It is a well settled proposition of law that the judgment of the Criminal Courts are neither binding on the Civil Court/Motor Accident Claims Tribunal nor relevant in a Civil Case or a claim for compensation under the Motor Vehicles Act, except for the limited purpose of showing that there was a criminal prosecution which ended in conviction or acquittal. But there is an exception to the general rule. When an accused pleads guilty and is convicted based on his admission, the judgment of the Criminal Court becomes admissible and relevant in Civil proceedings and proceedings before the Motor Accident Claims Tribunal, not because it is a judgment of the Criminal Court, but as a document containing an admission. Of course, admissions are not conclusive proof of the facts admitted therein. But unless and until they are proved to be in correct or false by the person against whom the admissions are sought to be used as evidence, the same shall be the best piece of evidence."

45. As per the above said Division Bench judgment, admissions made before the Criminal Court are not conclusive proof of what is admitted therein, unless and until, they are proved to be incorrect or false on the person against whom, the admissions are sought to be used as evidence. Conversely, if the admission or conviction based on pleading guilty is not proved to be incorrect or false, then the same shall be the best piece of evidence. In the case on hand, there is no doubt regarding the accident for the reason that Exhibit P-1-FIR, Exhibit P-3-Accident Register and Exhibit P-4-



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Sketch, were prepared immediately after the accident. A charge sheet has also been laid against one Mr. Balaji, rider of Bajaj M80 motorcycle insured with the appellant-Insurance Company. The appellant-Insurance Company has not let in any oral or documentary evidence, rebutting the manner of accident.

46. In the normal course, if there was any doubt regarding the involvement of the vehicle in an accident, the Insurance Company would engage an Investigator to find out the manner of accident which apparently has not been done in the present case. If there was any suspicion, a request could have been made to the Police or some other Investigating Agency to re-do the investigation properly. In the case on hand, apparently, no such exercise has been done by the appellant-Insurance Company. Had the Insurance Company taken any steps to examine the owner of Bajaj M80 or the Inspector of Police, who laid charge against the rider of the above said vehicle and proved that the laying of charge sheet, as per Exhibit P-4, is incorrect or false, then the said document can be said to be not conclusive proof of the facts contained therein.

10. Accordingly, following the dictum laid down in the afore mentioned judgment, these Civil Miscellaneous Appeals are allowed and the judgments of the learned Subordinate Judge, Kanchipuram, in M.C.O.P.Nos.306, 307, 310, 311, 312, 313, 314, 315, 319, 320, 321, 350, 368 & 552 of 2009 are hereby set aside with a direction to the learned Subordinate Court, Kanchipuram to consider the claim of the appellants. Accordingly, the matters are remanded back to the Tribunal for fresh consideration to decide the cases in accordance with law, within a period of one year from the date of receipt of a copy of this judgment. It is open to the appellants as well as the respondents to let in any further evidence to prove their case. No costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

sbn



To

1.The Motor Accident Claims Tribunal,
(Subordinate Judge), Kanchipuram.

1 cc to MR.R. Prabakaran, Advocate, Sr. 16014

14 ccs to Mr.K. Thirunavukkarasu, Advocate, Sr. 15963 to 15976

C.M.A.Nos.319 to 332 of 2014

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