

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 12.03.2020

Pronounced on : 04-06-2020

CORAM:

THE HONOURABLE MR. JUSTICE R. SUBBIAH
and
THE HONOURABLE MR. JUSTICE R. PONGIAPPAN

Civil Miscellaneous Appeal No. 3392 of 2014

M/s. United India Insurance Company Limited
No.9, Shanmugam Road
Tambaram West
Chennai - 600 045 .. Appellant/2nd respondent

Versus

1. N. Prathap
Son of Sankunny
No.18, 2nd Floor, Bikshalaya
Thiruneermalai Road, Pammal
near L.C. Mahal
Chennai - 600 075 ..1st Respondent/ Petitioner
2. S. Sunilraj
No.5/2, Patinathar Street
Chitlapakkam,
Chennai - 600 064 ..2nd Respondent/ 1st Respondent

Appeal filed under Section 173 of The Motor Vehicles Act 1988, against the Judgment and Decree dated 31.01.2014 passed in MCOP No. 2324 of 2011 on the file of Motor Accidents Claims Tribunal, II Court of Small Causes, Chennai.

For Appellant : Mr. M.B. Raghavan
For Respondents : Mr. K. Jayakumar for R1
R2 was set exparte

JUDGMENT

R. Subbiah, J

The Insurance Company has come forward with this appeal questioning the correctness of the Order passed by the Tribunal awarding a sum of Rs.23,07,030/- as compensation payable by Insurance Company to the first respondent/claimant for the injuries sustained by him in a road accident.

owned by the second respondent and driven by one Unni Krishnan. When the motor cycle was proceeding near Tank Bund Road, Opposite to Loyala College, Nungambakkam, the rider of the two wheeler lost control and hit the centre median in order to avoid another accident. In that process, the claimant fell down and sustained grievous injuries all over the body. He was admitted in Apollo Speciality Hospital at Mount Road Chennai where he had taken treatment as an in-patient from 06.12.2009 to 15.02.2010. According to the claimant, he suffered Traumatic brain injury - left frontotemporo parietal acutesub dure hematoma, laceration in right pinna, electrolyte imbalance, laceration in right ear, residual weakness with stiffness in the right upper and lower limbs. It is stated that at the time of accident, the claimant was 28 years old and was employed as Senior Process Executive Officer in Cognizant Technology Solution, MEPZ, Tambaram Sanatorium, Chennai and was earning Rs.35,000/- per month. Therefore, for the injuries sustained in the accident referred to above, the claimant has filed the claim petition claiming a compensation of Rs.36,00,000/-.

3. Before the Tribunal, the owner of the two wheeler - second respondent in this appeal, remained exparte.

4. The claim petition was contested by the Insurance Company by contending that the claim petition has been filed by suppressing the material particulars leading to the accident. One Mr. Kumar, friend of the claimant who had come to the Apollo Hospital to meet him on the very same day of the accident, had given a letter to the police, based on which the First Information Report came to be registered. As per the first information report, on 06.12.2019, while the claimant was riding the two wheeler, he had lost control and fell down, as a result of which he sustained grievous injuries. Therefore, it is contended by the Insurance Company that it is not as though the claimant was travelling as a pillion rider in the two wheeler driven by one Unni Krishnan at the time of the accident. The claimant himself was the rider of the motor cycle and not a pillion rider.

5. Before the Tribunal, the claimant examined himself as PW1 and Dr. J.R.R. Thiagarajan was examined as PW2 and Exs. P1 to P7 were marked. On behalf of the appellant/Insurance Company, Mr. B. Arunan, Investigator was examined as RW1 and Exs. R1 to R3 were marked. The Tribunal on analysis of the evidence had rendered a finding that Mr. Kumar, friend of the claimant, who has given the complaint, did not witness the occurrence and therefore, the first information report, which came to be registered at the instance of Mr. Kumar, cannot be believed. Thus, the Tribunal, accepting the oral evidence of PW1, has concluded that the claimant travelled as a pillion rider in the two wheeler driven by one Unni Krishnan and due to his rash and negligent driving, the accident had occurred. The Tribunal also, taking note of the period of hospitalisation of the claimant, nature of injuries sustained by him and Ex.P7, Disability Certificate issued by PW2 has awarded a total sum of

Rs.23,07,030/- payable by the respondents 1 and 2 jointly and severally. Aggrieved by the same, the Insurance Company had come forward with this appeal mainly on the ground that the claimant had suppressed the material particulars leading to the accident.

6. The learned counsel appearing for the appellant/Insurance company would vehemently contend that the origin and genesis of the earlier claim petition filed by the claimant himself on 25.01.2011 before the Tribunal has been suppressed in this case. At the first instance, on behalf of the claimant, a claim petition was filed on 25.01.2011. In column No.23 of the claim petition filed on 25.01.2011, it was stated that when the claimant was walking on the road, a Vehicle bearing Registration No. TN 09 S 9999 driven by the driver of the respondent therein had hit him owing to which he sustained grievous injuries. The name of the driver was given as Vijayan, a resident of No.9, Mosque Street, Guindy, Chennai - 600 032. It was also stated in Column NO.15 that the owner of the vehicle is R. Ram, a resident of No.6, T.T. Main Road, Gandhi Nagar, Madras - 600 090. However, a clean copy of the claim petition was filed in which the entire narration of the facts leading to the accident had been changed to suit the convenience of the claimant to claim compensation. The learned counsel for the appellant/ Insurance Company has also relied upon the first information report registered on 06.12.2009 in Crime No. 441/2009 on the basis of the letter given by one Mr. Kumar. According to the complainant Mr. Kumar, he came to know about the accident in which his friend - the claimant, had sustained injuries. He has clearly narrated in the complaint that at the time of accident, the two wheeler was driven by none other than the claimant. Therefore, the question of the claimant travelling as a pillion rider does not arise in this case. The learned counsel for the appellant relied on Ex.R1, letter addressed to the Insurance Company by the claimant, wherein he has admitted that at the relevant point of time, he himself had driven the two wheeler. These documentary evidence, according to the learned counsel for the appellant, would falsify the claim of the claimant. The Tribunal, without considering the aforesaid facts, has awarded a sum of Rs.23,07,030/- as compensation. When the claim petition itself is bogus and the manner in which the accident had occurred has been suppressed, the claimant is not entitled for payment of compensation. It is also contended by the learned counsel for the appellant that the claimant had gained employment with substantial income subsequent to the accident and therefore, the question of loss of earning capacity will not arise in this case.

7. On the above contention, we have heard the learned counsel for the first respondent/claimant, who has stated that it is the normal practice in the Motor Accident Claims Tribunal to file a claim petition with whatever material details available and as and when the full particulars are obtained, a clean copy will be filed. Further, the letter given by Mr. Kumar, based on which the first information report was

registered, has no significance inasmuch as Mr. Kumar did not witness the occurrence. This was also clearly pointed out by the Tribunal for disbelieving the contents of the letter of Mr. Kumar. Further, the letter, Ex.R1 was written by the father of the claimant to the Insurance Company and therefore such a letter need not be relied upon. The Tribunal, considering all these aspects, has rightly awarded compensation to the claimant. Such a well merited award need not be interfered with by the Tribunal and therefore, he prayed for dismissal of the appeal.

8. Admittedly, the claimant suffered grievous injuries in a road accident on 06.12.2009. However, the manner in which he sustained accident has been suppressed by him while filing the claim petition seeking compensation. This is explicit from the claim petition filed on behalf of the claimant at the first instance on 25.01.2011. As per the claim petition filed on 25.01.2011, in column No.23, it was stated that the claimant, while walking on the road, was hit by a vehicle bearing Registration No. TN 09 S 9999, which resulted in sustaining grievous injuries. In column No.15 thereof, relating to name and address of the owner of the vehicle, it was stated as "N. Ram, No.6, Second Main Road, Gandhi Nagar, Madras - 600 090.". In Column No.16 (a) relating to Name and Address of the driver-in-charge of the vehicle at the time of accident, it was stated as "V. Vijayan, No.9, Mosque Street, Guindy, Chennai - 600 032". In Column No.12, wherein the claimant is required to furnish the Name and Address of the Medical Officer/Practitioner, if any, who attended on the injured/deceased, it was stated as "Duty Doctor G.H.". However, in the cause title, the name of the first respondent was mentioned as Sunilraj, whose particulars were never furnished in Column No.15 or 16 relating to owner or driver of the vehicle. Subsequently, in the guise of filing a clean copy of the Claim Petition filed on 25.01.2011, a fresh claim petition was filed on 05.07.2011, in which the entire facts, leading to the accident had been altered and varied. In the claim petition filed on 05.07.2011, it was stated that the claimant, while travelling as a pillion rider, had sustained injuries as the rider of the two wheeler lost control of the vehicle and hit the median divider near Lake Bund Road, Opposite to Loyola College, Nungambakkam, Chennai. It was also stated that soon after the accident, the claimant was admitted in Apollo Hospital for treatment. In the claim petition dated 05.07.2011, the second respondent herein namely Sunilraj was stated to be the owner of the two wheeler and one Unnikrishnan was shown as the rider of the two wheeler at the relevant point of time. These facts are entirely differ from that of the particulars furnished in the claim petition filed at the first instance on 25.01.2011.

9. The learned counsel for the first respondent would contend that in the claim petition filed on 25.01.2011, the facts have been furnished without proper verification and therefore, in the clean copy filed on 05.07.2011, the material particulars were verified and correctly furnished. Therefore,

the clean copy filed on 05.07.2011 cannot be said to be the exaggerated version and/or different from that of the particulars furnished in the claim petition on 25.01.2011. It is further stated that the letter under Ex.R1 has been written by the father of the claimant and the claimant has only signed it. We are not in a position to accept this submission. The letter Ex.R1 has been signed by the claimant knowing fully well about its contents and it would falsify the particulars furnished in the claim petition on 25.01.2011. The particulars furnished in the claim petition on 25.01.2011 is materially different from the one furnished in the claim petition filed on 05.07.2011. Even the vehicle registration number, description of the vehicle, manner in which accident had taken place, hospital where the claimant was admitted etc., have been changed. In such circumstances, Ex.R1 letter written by the father of the claimant and signed by the claimant will only gives rise to an inference that the accident has not occurred as stated in the claim petition filed on 05.07.2011. Therefore, we hold that the particulars furnished in the claim petition on 05.07.2011 are exaggerated by suppressing the manner in which the accident had taken place.

10. The claim petition was filed at the first instance on 25.01.2011, which could be evident from the seal affixed thereon. Subsequently, a claim petition with exaggerated version had been filed on 05.07.2011 in which the entire events leading to the accident had been modified to suit the convenience of the claimant to get compensation. This could be further strengthened from the deposition of RW1, Investigator of the appellant Insurance Company. RW1 had stated that the complaint relating to the accident was given by one Mr. Kumar, friend of the claimant and on the basis of such complaint, the case in Crime No. 441 of 2009 was registered. In the complaint given by Mr. Kumar, he had stated that his friend, the victim, had sustained injury while he was riding the two wheeler thereby falsifying the case of the claimant made in the claim petition filed on 25.01.2011. It is on the basis of this complaint, RW1 proceeded to Apollo Hospital and made an investigation which revealed that the claimant himself had driven the vehicle on the fateful day and sustained injuries. However, the Tribunal disbelieved the version of RW1 on the ground that he commenced the investigation on the basis of the complaint given by Mr. Kumar, when Mr. Kumar himself has not witnessed the accident. The Tribunal also disbelieved the contents contained in the first information report on the ground that Mr. Kumar did not witness the accident and therefore, the first information report cannot be believed. Such an approach on the part of the Court below is not only erroneous but cannot be countenanced. The first information report is the best piece of evidence which, in this case, had emanated at the earliest point of time, soon after the accident. Therefore, the trial court ought not to have disbelieved the complaint given by Mr. Kumar, which formed the basis for registration of the first information report in Crime No. 441 of 2009. Moreover, in the investigation report under Exs. R2 and R3, clear reference was made to the fact that on the fateful day, the claimant alone was driving the two

wheeler, lost control and hit the median divider. Therefore, we are of the view that the trial court failed to take note of the two different versions given in the claim petition filed on 25.01.2011 and on 05.07.2011 while adjudicating the claim petition filed by the claimant. While so, the contention of the counsel for the claimant that it was the normal practice to file a rough claim petition and as and when fullest particulars are available, a clean copy will be filed, cannot merit acceptance. It may be true that there can be some variation in the rough copy as well as clean copy, but in the guise of filing a clean copy, the entire averments leading to the accident cannot be changed, altered or varied. The particulars furnished in the claim petition on 25.01.2011 varies with the clean copy furnished on 05.07.2011 with respect to the manner in which the accident had taken place, vehicle number, hospital where the claimant was admitted soon after the accident etc., Such particulars furnished in the claim petition on 05.07.2011 materially alters and varies the particulars furnished in the claim petition filed at the first instance on 25.01.2011 with exaggerated version. In the claim petition filed on 25.01.2011, the description of the vehicle which allegedly hit the claimant was not furnished however, the registration number of the vehicle was described as TN 09 S 9999, but the vehicle description and registration number provided in the Claim Petition filed on 05.07.2011 are different viz., Two Wheeler bearing Registration No. TN 22 BZ 3250. The furnishing of the description of the vehicle and name of the owner are important to decide the liability of the Insurance company to pay compensation to the motor accident victim. In the present case, the vehicle description was not given in the claim petition filed on 25.01.2011, but the registration number of the vehicle alone was furnished. Subsequently, in the claim petition filed on 05.07.2011, the description of the vehicle has been furnished as two wheeler and the registration number of the vehicle provided is totally different from that of the earlier claim petition filed on 25.01.2011. Furthermore, the insurance company has established through the deposition of RW1 and Exs. R1 to R3 about the manner in which the accident had occurred, which is contrary to the claim petition filed on 05.07.2011. In such circumstances, the Insurance Company cannot be mulcted with the liability to pay compensation to the claimant. Consequently, we hold that the Judgment of the Tribunal cannot be sustained and it is liable only to be set aside.

11. Before parting with the case, we are constrained to observe that the Motor Vehicles Act is a benevolent legislation framed by our legislature with an avowed intention to provide financial assistance to the hapless victims of motor accident, who suffer bodily injury or death. However, certain disgruntled elements are taking advantage of the provisions of the Act and Rules to gain unlawful enrichment, which should not be permitted by the Tribunals while dealing with motor accident claims. A genuine victim of motor accident deserves compensation befitting the nature of injuries sustained, at the same time, the Courts have to deal with an iron hand to unearth

false and spurious claims made at the behest of the claimant(s) to get unlawful enrichment. In the present case, the Tribunal has totally lost sight of the two different versions given in the claim petition filed at the first instance on 25.01.2011 and the exaggerated version in the claim petition filed on 05.07.2011 and awarded an exorbitant amount as compensation to the claimant based on misplaced sympathy, which cannot be countenanced. While rendering justice to the litigants, the duty of the Courts or Tribunal is not only to ensure that genuine victims of motor accident are adequately compensated, but also to identify those gullible litigants, who attempt to make the justice delivery system a mockery, to grab public money.

12. In the result, we set aside the Order and Decree dated 31.01.2014 passed in MCOP No. 2324 of 2011 on the file of Motor Accidents Claims Tribunal, II Court of Small Causes, Chennai. The Civil Miscellaneous Appeal filed by the Insurance Company is allowed. However, there shall be no order as to costs.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

The Motor Accidents Claims Tribunal-II
Court of Small Causes, Chennai.

Copy to:

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

CMA No. 3392 of 2014

Vsn II

A.SK(24/09/2020)

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