



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.12.2020

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.M.A (MD)NO.848 of 2007

WEB COPY

M.Kasiviswanathan : Appellant/Petitioner

.vs.

1.U.Ramachandran

2.M.K.Gurudevi

3.The New India Assurance Company Limited,
High Sports Lodge,
No.147, Salai Street,
Ramnad. : Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree made in M.C.O.P.No.17 of 2000, dated 21.11.2005 by the Chief Judicial Magistrate(Motor Accident Claims Tribunal), Ramanathapuram and to set aside the quantum of award concerned and enhance the award amount as original claim in the above M.C.O.P.No.17 of 2000.

For Appellant : Mr.S.Asaithambi

For Respondent-1 : Mr.C.Dhanaseelan

For Respondent-2 : Dismissed vide Court
order, dated 10.4.2019

For Respondent-3 : Mr.B.Vijay Karthikeyan

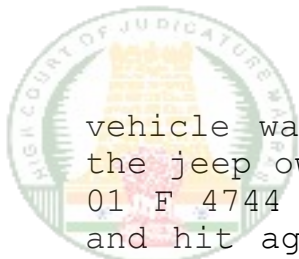
JUDGMENT

This Civil Miscellaneous Appeal is directed against the award passed by the Motor Accident Claims Tribunal(Chief Judicial Magistrate), Ramanathapuram in M.C.O.P.No.17 of 2012, wherein, the claim Petition preferred by the appellant came to be dismissed vide judgment, dated 21.11.2008.

2.The brief facts of the case are that:

On 3.11.1998, the claimant was riding the Scooter bearing Registration No.TAA 5698 from east to west direction and when the

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vehicle was proceeding near Madurai-Rameswaram National Highways, the jeep owned by the first respondent bearing Registration No. PY 01 F 4744 was driven by its driver in a rash and negligent manner and hit against the scooter, in which, the claimant has sustained fractures as well as injuries. When he was in an unconscious state, he was taken to a private Hospital in Ramanathapuram, where he took treatment. Hence he is entitled for compensation of Rs.7 lakhs.

3.The first respondent in his counter affidavit, has denied the involvement of his vehicle and it is his case that the vehicle was introduced to make a false claim against the first respondent.

4.The respondents 2 and 3 are the owner and insurer of the two wheeler and in their counter, they supported the case of the claimant.

5.During trial, on behalf of the claimant P.W.1 to P.W.5 were examined and Ex.P1 to Ex.P23 were marked. The first respondent examined three witnesses and produced Ex.R1 and Ex.R2. On appreciation of evidence adduced by both the parties, the Tribunal held that the Jeep was not involved in the accident and dismissed the claim petition. Hence this appeal.

6.Mr.S.Asaithambi, learned counsel appearing for the appellant would state that the claim petition came to be dismissed by adopting hyper-technical approach. It is the submission of the learned counsel for the appellant that in the accident the claimant suffered injuries and he was immediately taken to Pioneer Hospital where he mentioned about the Registration Number of the vehicle of the first respondent and Doctor also deposed that the claimant was hit by a Jeep and in this regard, Ex.P23-Wound Certificate was also issued. When the claimant has proved the involvement of the vehicle belonging to the first respondent, the Tribunal has committed an error in dismissing the claim petition.

7.Per contra, Mr.C.Dhanaseelan, learned counsel appearing for the first respondent would submit that the accident had taken place on 3.11.1998, but, admittedly, the complaint was preferred after a lapse of 9 months ie., on 2.8.1999. It is also stated that the claimant is an employee of Southern Railway, while his wife was working as Deputy Tahsildar in Ramanathapuram Collectorate. Therefore, at their influence, the case was registered against the driver of the first respondent and in fact, the said vehicle was not involved in the accident. It is further contended that P.W.4, the Doctor who treated the claimant, has admitted in his cross-examination that as per Ex.P23-Wound Certificate, it is stated that the accident had taken place near Collectorate Office (Check Post) and it is a case of medico legal case and therefore, immediately the hospital, should have given intimation to the Police. The learned counsel justified the finding of the Tribunal.



8.This Court carefully considered the rival submissions made by the learned counsels appearing on either side and perused the materials available on record.

9.It is the case of the claimant that on 3.11.1998, when he was riding his two wheeler, driver of the first respondent vehicle drove his vehicle in a high speed and in a rash and negligent manner and hit against the two-wheeler. Admittedly, for the accident that had taken place on 3.11.1998, the complaint was preferred only on 2.8.1999, i.e., after a period of 9 months. It is not disputed that at that relevant time, the claimant is an employee of Southern Railway and his wife was working as a Deputy Tahsildar in the Revenue Department. It is the evidence of P.W.1 that immediately after the accident, the first respondent came to the hospital and stated that he was ready to bear the medical expenses and only on that account, no complaint was given to the Police immediately. However, subsequently, he gone back from his undertaking and hence a complaint was preferred belatedly. This Court is not impressed with the explanation offered by the claimant for the belated complaint lodged to the Police.

10.It is to be noted that after the registration of the case on 2.8.1999, both the vehicles ie., two wheeler and jeep were subjected to examination by the Motor Vehicles Inspector, where, it was found that there was no damage to both the vehicles. Furthermore, the evidence of Dr.Ravichandran and Ex.P2 and Ex.P3 are not helpful to the case of the claimant. After elaborately discussing the evidence adduced by the parties at Paragraphs 11 and 12, the Tribunal held that the jeep belonging to the first respondent was not involved in the accident. Those factual matrix need not be reiterated in this order.

11.Taking note of the above aspects, in my considered opinion, the factual finding recorded by the Tribunal warrants no interference of this Court. In that view, the Civil Miscellaneous appeal fails and it is dismissed. No costs.

Sd/-

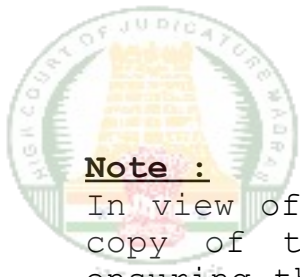
Assistant Registrar(CS-II)

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Sub Assistant Registrar(CS)

Vsn



Note :

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

1.The Chief Judicial Magistrate,
(Motor Accident Claims Tribunal), Ramanathapuram.

2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai(2 Copies).

+1 CC to Mr.S.ASAI THAMBI, Advocate SR.No.23785

+1 CC to Mr.B.VIJAY KARTHIKEYAN, Advocate SR.No.24037

JUDGMENT MADE IN
C.M.A(MD)No.848 of 2007
02.12.2020

SE (CO)

TR(18.01.2021) 4P 6C