



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 26.03.202

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WEB COPY

CORAM:

THE HON'BLE MR.JUSTICE D.KRISHNAKUMAR

CMA.NO.1890 OF 2010

The Branch Manager,
The New India Assurance Co.Ltd.,
Vellore

... Appellant/
2nd Respondent

..vs..

1.K.Karunanidhi
S/o.Kuppuswamy

2.T.S.Murali,
S/o.Seshachalam

...Respondents/
Petitioners/1st Respondents

Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 11.08.2008 in M.C.O.P.No.127 of 2004 on the file of the Motor Vehicles Accident Claims Tribunal, Sub Court, Cheyyar.

For Appellant : Mr.K.Vinoth

For Respondents : Mr.S.Makesh - R1
Notice Served - R2

JUDGMENT

This Civil Miscellaneous Appeal has been filed by the appellant-Insurance Company against the judgment and decree dated 11.08.2008 in M.C.O.P.No.127 of 2004 on the file of the Motor Vehicles Accident Claims Tribunal, Sub Court, Cheyyar.

2.The appellant is the 2nd respondent before the tribunal . The 1st respondent has filed the claim petition, claiming a sum of Rs.5,00,000/- as compensation for the injuries sustained by him in the road accident that took place on 23.01.2004.



3. It is the case of the 1st respondent/claimant that on 23.01.2004 at about 8.30 p.m, the claimant and his friend were returning to their residence from Cheyyar to Thimiri after completing their business in a two wheeler bearing Reg.No. TN25-L-0293. The claimant was traveling as pillion rider in the said vehicle. While proceeding near Arcot Koot Road, the rider of the two wheeler rode the same in a rash and negligent manner and applied break suddenly. Due to which, the claimant thrown down from the two wheeler and got severe and multiple injuries. He was admitted in MIOT Hospital, Chennai and took treatment for his injuries. The said accident had occurred only due to rash and negligent riding on the part of the rider of the two wheeler. Hence, the claimant filed claim petition, claiming a sum of Rs.5,00000/- as compensation. The tribunal on considering the oral and documentary evidence, has fixed the negligence on the part of the rider of the two wheeler and being insurer of the vehicle, insurance company/appellant herein was directed to pay compensation of Rs.1,85,097/- along with interest at the rate 7.5% per annum.

4. Challenging the liability, the Insurance Company has preferred the present appeal.

5. Before the Tribunal, on the side of the claimant two witnesses were examined as P.W.1 & PW2 and marked ten documents ExP1 to P10. On side of the respondents one witness RW1 was examined and marked two documents viz., Ex.R1 to R3.

6. The learned counsel for the appellant/insurance company has submitted that the tribunal failed to appreciate that the motor cycle bearing Reg.No.TN23-L-0293 was not involved in the alleged accident and that the said vehicle was falsely implicated. The tribunal failed to see that the claimant had lodged the FIR after 18 days of the alleged accident and there is no mention in the hospital records with regard to the involvement of the alleged motorcycle. The learned counsel for the appellant/insurance company further submitted that the tribunal did not consider the fact that as per hospital records, the claimant is a resident of Chennai and that he is said to have suffered injuries in a road accident on 23.01.2004 at 6.30 PM, but in the FIR, it is mentioned that the accident is said to have occurred at 8.30 PM.

7. The learned counsel for the appellant/insurance company submitted that the tribunal failed to appreciate that except the disputed FIR and pursuant criminal proceedings which are manipulated in collusion with the rider/owner of the vehicle, there is no evidence whatsoever to prove the involvement of the motorcycle bearing Reg.No.TM23-L-0293 in the accident. Hence the



Judgment and decree passed by the tribunal is liable to be set aside.

8. On the other hand, the learned counsel appearing for the 1st respondent/claimant has submitted that based on the oral and documentary evidence, the tribunal has rightly determined the compensation and fixed the negligence. Therefore, the award passed by the tribunal is reasonable and fair and does not require any interference by this Court.

9. Heard the learned counsel for the appellant/insurance company and the learned counsel appearing for the 1st respondent/claimant and perused the document available on record.

10. On points:

The main contention raised by the learned counsel for the appellant is with regard to the involvement of the motorcycle bearing Reg.No. TN23-L-0293 in the alleged accident and the same is falsely implicated in the claim petition.

11. To substantiate the said arguments, before the tribunal, the insurance company has marked three documents viz., Ex.R1/ Accident Register for the accident that occurred on 24.01.2004 and the documents Ex.R2 & R3 are copy of the petitions filed in 155/05 and 156/05 Further in Ex.R2 one Viruthambal was examined as eyewitness to the accident, she deposed that on 28.11.2004 at 9.40AM, a Murugan Bus bearing Reg.No. TN32-V-3303 was involved in the accident. Therefore, it is clear that the said documents are not relevant to the present case. The tribunal has also rightly observed the said fact and rejected the evidence and documents filed by the insurance company.

12. RW1 in his evidence has stated that the accident had occurred in Arani Road, the claimant instead of taking treatment at Cheyyar Hospital, which is 1 Km from the occurrence place, has taken treatment in Miot Hospital, Chennai which is 120 km away from the occurrence place and lodged FIR after 18 days of the accident. Therefore only with the intention to implicate the vehicle bearing Reg.No.TN23-L-0293 in the alleged accident, the claimant lodged the FIR after the delay of 18 days. But the Insurance Company has failed to mark any documents or evidence to substantiate the statement of RW1.

13. It is stated in the EX.P1/FIR that the accident occurred on 23.01.2004. Immediately after the accident, the claimant/1st respondent herein was admitted in Miot Hospital, Chennai and has been taking treatment till 07.02.2004 and only after discharge from the hospital, he lodged the complaint on 10.02.2004. In view of the above statement in the FIR, it is



clear that the only due to the treatment taken by the claimant in Miot Hospital, Chennai, the delay in the registering FIR has occurred. The said reason is acceptable. The tribunal has also rightly considered the statement made in the FIR and rejected the contention made by the insurance company and the evidence of RW1 that the claimant had lodged the FIR after 18 days to implicate the motorcycle bearing Reg.No.TN23-L-0293.

14. Admittedly, the learned counsel for the appellant/insurance company has not denied the accident, the only contention is involvement of the vehicle. The appellant/insurance company has failed to substantiate their contention by way of documents to prove their case. In view of the unsupported documents marked by the insurance company and the clear statement made in the FIR for the delay and taking note of the fact that no rebuttal evidence to prove the false claim, this Court is of the view that the findings of the tribunal in fixing negligence on the part of the rider of the two wheeler bearing Reg.No.TN23-L-0293 is proper and since the vehicle is insured with the appellant/insurance company, the appellant/insurance company is liable to pay the compensation. This Court finds no error in the award passed by the tribunal and the same is confirmed.

15. The appellant /Insurance Company is directed to deposit the entire compensation amount along with interest as awarded by the tribunal, less the amount already deposited, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the 1st respondent/claimant is permitted to withdraw the compensation along interest and costs, after adjusting the amount, if any, already withdrawn, by filing necessary applications before the Tribunal.

16. In the result, the Civil Miscellaneous Appeal is dismissed and the award passed by the tribunal in M.C.O.P.No. 127 of 2004, dated 11.08.2008 is confirmed. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

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

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Copy To

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

+1cc to Mr.K.Vinoth, Advocate, S.R.No.25163
+1cc to the Government Pleader, S.R.No.25674

CMA.No.1890 of 2010

KK(CO)
CS/11/10/2021