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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.12.2021

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

Civil Miscellaneous Appeal No.1728 of 2020
and CMP No. 12786 of 2020

The Divisional Manager,
National Insurance Company Ltd.,
Anna Salai, Vellore Post,
Vellore District.

... Appellant/2nd Respondent

Vs.

1.Tirupathi

..1st Respondent/Petitioner

2. S.Varatharaji

..2nd Respondent/1st Respondent

3. K.Raja

... 3rd Respondent/3rd Respondent

Civil Miscellaneous Appeals filed under Section 173 of Motor Vehicles Act, 1988, to set aside the decree and judgment dated 29.07.2019 made in M.C.O.P.No.561 of 2014 on the file of the Motor Accidents Claims Tribunal (Special Subordinate Judge), Tiurpattur.

For Appellant : Mr. D.Bhaskaran

For Respondents : No appearance

J U D G M E N T

The Insurance Company which was saddled with the liability to pay a compensation of Rs.2,70,629/- to the first respondent for the injuries suffered by him in a road accident that occurred on 03.03.2014 has come up with this Appeal, challenging the finding of the Tribunal that the rider of the Motor Cycle insured with it was responsible for the accident.

2. According to the claimant he was travelling as a pillion rider in a two-wheeler bearing Registration No.TN 23 BL 2877, the said two-wheeler was driven by one S.Varatharaji, who was its owner also. The claimant would allege that the said Varatharaji, drove the vehicle in a rash and negligent manner and hit against another two-wheeler bearing Registration No.TN



23 BS 2586, owned by the third respondent in MCOP namely one K.Raja and driven by one Arulmani. As a result of the accident the claimant who was a pillion rider was thrown off the vehicle and sustained grievous injuries. Claiming that the injuries had resulted in a permanent disability and he has also suffered considerable pain and suffering because of the accident, the claimant sought for a compensation of Rs.10,00,000/-.

3. The claim was resisted by the Insurance Company contending that the motor cycle bearing Registration No. TN 23 BS 2586, owned by the third respondent and driven by one Arulmani was not insured with it. While admitting the insurance of the Motor Cycle bearing registration No. TN 23 BL 2877, the Insurance Company would contend that the rider of the two-wheeler namely Mr.Varatharaji was not responsible for the accident.

4. Reliance was also placed by the Insurance Company on FIR, the Accident Report, the Investigation Report which shows that the rider of the two-wheeler bearing Registration No. TN 23 BS 2586, had pleaded guilty and paid the fine to demonstrate that it was the negligence of the rider of the two-wheeler bearing registration No. TN 23 BS 2586, that caused the accident. Therefore, according to the Insurance Company, the claimant being a pillion rider in the vehicle insured with it, cannot seek compensation from the Insurance Company.

5. The first respondent and the third respondent remained exparte. The Tribunal on a consideration of the evidence, assessed the quantum of compensation at Rs.2,70,629/-.

6. Mr.D.Bhaskaran, learned counsel appearing for the Insurance Company, does not challenge the quantum. He would attack the finding of the Tribunal on negligence and submit that though FIR was lodged against the rider of the two-wheeler bearing Registration No. TN 23 BS 2586, the charge sheet was also laid against him and he had pleaded guilty, the claimant and Varatharaji, the owner of the two-wheeler bearing registration No. TN 23 BL 2877, upon learning that the other vehicle bearing Registration No. TN 23 BS 2586, did not have a valid insurance on the date of the accident, with a view to shift the liability on the Insurance Company had filed the claim, as if there was negligence on the part of Varatharaji, who was the rider and owner of the vehicle insured with the appellant/Insurance Company.

7. The Tribunal, however, chose to rely upon the evidence of the so called independent witness namely P.W.2 to conclude that the rider of the two-wheeler insured with the appellant/Insurance Company was in fact rash and negligent and



he had caused the accident. In coming to the said conclusion, the Tribunal rejected the evidence offered by FIR, the Accident Register, the Charge Sheet filed before the Magistrate and the fact that the rider of the other two-wheeler bearing Registration No. TN 23 BS 2586, had pleaded guilty and paid the fine also. All these documentary evidence are not considered on the ground that those documents could be relied upon only to establish the factum of accident and not negligence.

8. The Tribunal in one line rejected all these documents holding that these documents can be relied upon only to the extent of proof of the accident and not the manner in which the accident took place. The Tribunal relied upon the evidence of P.W.2 to conclude that the accident occurred due to the rash and negligent driving of Varatharaji, the owner and rider of the two-wheeler bearing Registration No. TN 23 BL 2877. It will be pertinent to point out at this juncture, the very FIR was registered on the basis of the information provided by the said Varatharaji. FIR states that the rider of the other two-wheeler bearing Registration No. TN 23 BS 2586, namely one Mr.Arulmani was responsible for the accident. The Accident Register shows that Mr.Arulmani, was under the influence of Alcohol also. The Charge Sheet has been laid against him and he has also pleaded guilty and paid the fine on 20.08.2014, before the Judicial Magistrate I, Thirupatur.

9. As regards the oral evidence of P.W.2 though in the chief-examination, he has said that Varatharaji, drove the vehicle in a rash and negligent manner and dashed against the other two-wheeler driven by Arulmani, in cross-examination he conceded that it was Varatharaji and the claimant, who brought him to the Court to be deposed. That statement by itself creates a doubt on the integrity or the reliability of the evidence of P.W.2. He would also state that it was the counsel who brought him to lead evidence. The above statements made by P.W.2, in my considered opinion, make him a highly unreliable witness. I am therefore unable to sustain the conclusion of the Tribunal regarding negligence. When evidence in the form of documents is available and oral evidence is also available, the Tribunal will have to consider both and conclude on preponderance of probabilities.

10. At least two Division Benches of this Court in United India Insurance Co. Ltd., v. D.Hemavathy and others, reported in 2017 (2) TANMAC 115, and United India Insurance Co. Ltd., v. Suseela Jothi Mary and others, reported in Manu/TN/7547/2020 in CMA No.1814 of 2016, have held that FIR and other documentary evidence that are made available should be looked into in determining the negligence. It is also settled law that mere involvement of a vehicle in an accident cannot attribute



negligence to the driver of the vehicle, it has to be proved by evidence. In the case on hand, the evidence in the form of the documents viz., FIR, the Charge Sheet and the Investigation Report as well as the admission by the claimant that FIR was lodged against the other vehicle namely the vehicle bearing Registration No. TN 23 BS 2586, is definitely entitled to much more probative value than the evidence of P.W.2, which is very much unreliable.

11. I have no hesitation in setting aside the conclusion of the Tribunal on the question of negligence. Once the finding of the Tribunal on the question of negligence is set aside and it is found that it is the driver of the vehicle bearing Registration No. TN 23 BS 2586, was responsible for the accident, the liability to pay the compensation cannot be fastened on the appellant/Insurance Company.

12. Therefore, the Appeal is partly allowed, the award of the Tribunal is modified and the appellant/Insurance Company is exonerated from the liability. The owner of the two-wheeler bearing Registration No. TN 23 BS 2586, who is arrayed as the third respondent will be liable to pay the compensation. The Insurance Company is permitted to take back the amount deposited by it. Consequently, the connected miscellaneous petition is closed. There shall be no order as to costs.

Sd/-

Assistant Registrar(CS-VII)

//True Copy//

Sub Assistant Registrar

jv

To

1.The Special Subordinate Judge,
Motor Accident Claims Tribunal,
Tirupattur.

2. The Section Officer,
V.R.Section,
High Court of Madras.

+1cc to Mr.D.Bhaskaran, Advocate, S.R.No.65600

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and CMP No. 12786 of 2020

PVS (CO)
SB(18/05/2022)