IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.11.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.NOS.725 TO 733 OF 2014
AND
M.P.NOS.1 TO 1 OF 2014

Gandhi

.. Appellant
(in C.M.A.No.725 of 2014)

D.Mangaleswar

.. Appellant
(in C.M.A.No.726 of 2014)

P.Loganathan

.. Appellant
(in C.M.A.No.727 of 2014)

1.Bhasheerabi

2.Abdul rahim

3.Abdul khader

4.Shadidi Basha

5.Shajakhan

6.Noorjahan

.. Appellants
(in C.M.A.Nos.728 & 731 of 2014)

Arumugam

.. Appellant
(in C.M.A.No.729 of 2014)

Venkatesan

.. Appellant
(in C.M.A.No.730 of 2014)

M.Abdul Khader

.. Appellant
(in C.M.A.No.732 of 2014)

M.Shajakhan

.. Appellant
(in C.M.A.No.733 of 2014)

Vs.

1. D.Ravivarman

2. The Branch Manager,
United India Insurance Company Limited,
No.261, JN Street,
Puducherry.

.. Respondents
(in all cases)

Common Prayer: These Civil Miscellaneous Appeals are filed under Section 173 of the Motor Vehicles Act, 1988, against the common Judgment and Decree dated 18.04.2013 made in M.C.O.P.Nos.340 to 347 of 2006 & 84 of 2007 on the file of the Motor Accidents Claims Tribunal, II Additional District Court, Tindivanam.

(In all cases):

For Appellant(s)	:	Mr.D.Chandra Prabha for Mr.D.Ravichander
For R2	:	Mr.S.Arunkumar

COMMON JUDGMENT

(The matter is heard through “Video Conferencing/Hybrid mode”.)

These Civil Miscellaneous Appeals are filed challenging the common award dated 18.04.2013 made in M.C.O.P.Nos.340 to 347 of 2006 & 84 of 2007 on the file of the Motor Accidents Claims Tribunal, II Additional District Court, Tindivanam.

2.The appellants are the claimants in M.C.O.P.Nos.340 to 347 of 2006 & 84 of 2007 on the file of the Motor Accidents Claims Tribunal, II Additional District Court, Tindivanam. The 1st respondent is owner of the Tata Safari car bearing Registration No.TN 20 J 2727 and the 2nd respondent is the insurer of the Tata Safari car belonging to 1st respondent.

3.All the appeals arise out of the same accident and common award and hence, they are disposed of by this common judgment.

4.According to appellants, on 26.08.2002 at about 11.00 P.M., the injured claimants and deceased persons were sleeping in their houses. At that time, they heard a strange sound of collision of two vehicles. The came out from their houses to East Coast Road at Koonimedu and found collision of tractor with trailor loaded with paddy bags and a lorry. On humanitarian grounds, all the claimants, injured persons and deceased were helping the injured persons, who traveled in the tractor and gave first aid treatment to the injured persons. While so at about 11.45 P.M., while they were helping the injured persons in the tractor, a Tata Sumo car bearing Registration Number TN 32 V 2829, came from Pondicherry towards Marakkanam in a rash and negligent manner, dashed against the paddy bags which were lying on the middle of the road and due to the same, the driver of the Tata Sumo car lost his control and dashed against the electric pole. The Tata Sumo car was heavily damaged and driver of the Tata Sumo car escaped from the scene of occurrence. While the injured claimants and deceased persons were watching this, the Tata Safari car bearing Registration No.TN 20 J 2727 belonging to 1st respondent and insured with 2nd respondent, entered into the crowd and due to rash and negligent driving by the driver of the Tata Safari car, the injured claimants and deceased sustained grievous injuries and two persons, viz., Masthan and Sheik Ahmed died. In all the claim petitions, the claimants have furnished the details of injuries, age, occupation and income of injured and deceased persons and treatment taken by them in the Hospital and claimed various amounts as compensation from the respondents.

5.The 1st respondent - owner of the Tata Safari car bearing Registration No.TN 20 J 2727 remained exparte before the Tribunal.

6.The 2nd respondent - Insurance Company, insurer of the Tata Safari car belonging to 1st respondent filed separate counter statement in all the claim petitions and denied the involvement of Tata Safari car bearing Registration No.TN 20 J 2727 in the accident and submitted that the Tata Safari car did not ply in the East Coast Road at the time of accident. According to the claimants, in the accident, a lorry and a tractor with trailor and a Tata Sumo car were involved. But, they invented a new story that they suffered injuries due to involvement of Tata Safari car belonging to 1st respondent. In the F.I.R. registered based on the complaint given by the claimants, the driver of the Tata Sumo car alone was shown as accused. The said Tata Sumo car was not insured on the date of accident, but was insured with the National Insurance Company subsequently. The 2nd respondent further stated that the driver of the Tata Safari car did not possess driving license at the time of accident and the amounts claimed by the claimants are excessive and prayed for dismissal of all the claim petitions.

7.The 2nd respondent - Insurance Company filed additional counter statement stating that F.I.R. was registered only against one J.Kandasamy, driver of the Tata Sumo car mentioning the Registration Number of the Tata Sumo car as TN 32 V 2829, based on the complaint given by son and brother of the deceased namely Masthan and Sheik Ahmed, who is the eyewitness to the accident. The Tata Sumo car was immediately sent for inspection by the Motor Vehicle Inspector, while the Tata Safari car was sent for inspection only after four months of the accident. In the Motor Vehicle Inspector's report of the Tata Sumo car, though it is stated that the Tata Sumo car is insured on the date of accident, there was no insurance coverage for the said Tata Sumo car. The owners of both the Tata Sumo car and Tata Safari car are brothers. They are highly and politically influenced persons. Both colluded with Police and Police filed false charge sheet against the driver of the Tata Safari car belonging to 1st respondent. The 2nd respondent/Insurance Company gave complaint to the Deputy Superintendent of Police, District Crime Branch, Villupuram for fresh investigation and prayed fro dismissal of all the claim petitions.

8.Before the Tribunal, on behalf of claimants, the appellant in C.M.A.Nos.725 to 727 of 2014 examined themselves as P.W.1 to P.W.3, 1st appellant in C.M.A.Nos.728 & 731 of 2014 examined herself as P.W.4, appellant in C.M.A.Nos.729, 730, 732 & 733 of 2014 examined themselves as P.W.5 to P.W.8, Dr.Ponnappan was examined as P.W.9 and 45 documents were marked as Exs.P1 to P45. The 2nd respondent - Insurance Company examined five witnesses as R.W.1 to R.W.5 and 11 documents were marked as Exs.R1 to R11.

9.The Tribunal considering the pleadings, oral and documentary evidence, dismissed all the claim petitions.

10.Against the said common order of dismissal dated 18.04.2013 made in M.C.O.P.Nos.340 to 347 of 2006 & 84 of 2007, the appellants have come out with the present appeals.

11.The learned counsel appearing for the appellants contended that the Tribunal erroneously relied on Ex.P1 / F.I.R. and Ex.P6 / Discharge Summary for dismissing all the claim petitions. The Tribunal failed to appreciate the oral and documentary evidence let in by both the parties. Exs.P1 & P6 do not form conclusive proof of the case of 2nd respondent - Insurance Company. The 2nd respondent did not take any steps to summon the Investigation Officer to examine before the Tribunal. The complaint given by the 2nd respondent before the District Crime Branch is only with a view to defeat the claim of the claimants. The Tribunal, contrary to the judgment of this Court and the Hon'ble Apex Court, erroneously relied on F.I.R. instead of considering the evidence let in before the Tribunal on oath. The delay in inspecting the Tata Safari car will not be fatal to the claim made by the appellants. The Tata Safari car ran over the bystanders and damages caused to the Tata Safari car will be minimal. The investigator examined by the 2nd respondent is not having any experience and is employed on daily wage basis in the 2nd respondent/Insurance Company. The accident, injuries and death are admitted but dispute is only with regard to involvement of the vehicle. The competent authority is Police Investigating Officer and not the Investigating Officer of the 2nd respondent - Insurance Company. The Tribunal has erroneously drawn adverse inference that Tata Sumo car was the only vehicle involved in the accident based on Ex.P2 / Motor Vehicle Inspector's report of the Tata Sumo car. The factum that owners of Tata Sumo car and Tata Safari car are brothers will not falsify the case of the appellants. The appellants filed both F.I.R. as well as charge sheet and proved that after investigation by the concerned Police, charge sheet was filed only against the driver of the Tata Safari car and prayed for allowing all the Civil Miscellaneous Appeals.

12.The learned counsel appearing for the 2nd respondent - Insurance Company contended that the Tribunal considered not only Ex.P1 / F.I.R., but also Ex.P2 / Motor Vehicle Inspection report of the Tata Sumo car bearing Registration No.TN 32 V 2829, Ex.P6 / discharge summary and Ex.R11 / solatium received by the appellants in C.M.A.Nos.728 & 731 of 2014 for the death of Masthan and Sheik Ahmed in the accident caused by the Tata Sumo car. In the application filed before the Revenue Divisional Officer for solatium, the claimants in M.C.O.P.Nos.343 & 346 of 2006 / appellants in C.M.A.Nos.728 & 731 of 2014 have categorically stated that the vehicle involved in the accident is only Tata Sumo car. Contrary to the said statements, the appellants have filed claim petitions before the Tribunal alleging that the accident has occurred only due to rash and negligent driving by the driver of the Tata Safari car belonging to 1st respondent. The son of deceased Masthan who witnessed the accident, gave complaint only against the driver of the Tata Sumo car. Even in the rough sketch marked before the Tribunal, it was shown only the Tata Sumo car was in the place of accident. The 2nd respondent filed appeals challenging the award passed earlier in the very same claim petitions before this Court in C.M.A.Nos.1249 to 1257 of 2010 and this Court by the common judgment dated 30.09.2011 remanded the matter to the Tribunal on the ground that appellants failed to prove their claim. After remand, the Tribunal considered both the oral and documentary evidence and held that appellants have not proved the involvement of the Tata Safari car in the accident and dismissed all the claim petitions. There is no error in the said award of the Tribunal and prayed for dismissal of all the appeals.

13.Heard the learned counsel appearing for the appellants as well as the learned counsel appearing for the 2nd respondent - Insurance Company and perused the entire materials on record.

14.From the materials available on record, it is seen that it is the case of the claimants that on 26.08.2002 at about 11.00 P.M., while they were sleeping in their houses, they head a strange sound and came out from their houses and saw the accident involving lorry and tractor with trailor loaded with paddy bags. Due to the said impact, all the paddy bags were scattered on the road and appellants and deceased persons were helping the persons who traveled in the tractor. At that time, one Tata Sumo car bearing Registration No.TN 32 V 2829 driven in a rash and negligent manner by the driver, dashed on the paddy bags and due to the same, the driver of the Tata Sumo car lost his control and dashed on the electric pole on the side of the road. In the accident, the Tata Sumo car was heavily damaged and the driver of the Tata Sumo car escaped from the scene of occurrence. While the injured appellants and deceased persons were seeing the accident, the Tata Safari car bearing Registration No.TN 20 J 2727 owned and driven by the 1st respondent, came in a rash and negligent manner and dashed on the bystanders and injured persons and caused the accident. Due to the same, the injured appellants and deceased persons sustained grievous injuries and two persons viz., Masthan and Sheik Ahmed, died due to the injuries. On these averments, the claimants filed the above said claim petitions claiming compensation. To prove their case, they examined the injured claimants as P.W.1 to P.W.3, P.W.5 to P.W.8 and wife of deceased Masthan and Mother of deceased Sheik Ahmed was examined as P.W.4 and marked 45 documents as Exs.P1 to P45. P.W.1 to P.W.8 deposed as that of the averments in the claim petitions.

15.On the other hand, it is the case of the 2nd respondent - Insurance Company that the Tata Safari car was not at all involved in the accident and only the Tata Sumo car was responsible for the accident. At the time of accident, the Tata Sumo car was not insured with any Insurance Company and subsequently it was insured with the National Insurance Company for the period commencing from 04.12.2002 to 03.12.2003. The 1st respondent/owner of the Tata Safari car and the owner of Tata Sumo car are brothers and in order to avoid payment of compensation by the owner of the Tata Sumo car, the Tata Safari car was falsely implicated in collusion with Police. In support of their case, they examined R.W.1 to R.W.5 and marked 11 documents as Exs.R1 to R11.

16.From the documents relied on by the appellants, it is seen that Ex.P1/F.I.R. was registered based on the complaint given by one Shadik Basha, who is the son of deceased Masthan and brother of deceased Sheik Ahmed. The complaint was given within 6 hours from the accident. In the complaint, the complainant who witnessed the accident has categorically stated that the accident has occurred only due to rash and negligent driving by the driver of Tata Sumo car and he has also mentioned the Registration Number of the Tata Sumo car as TN 32 V 2829. There is no necessity for the complainant, who is the son and brother of two deceased persons to give false complaint against the driver of the Tata Sumo car. Further, Ex.P6 is the discharge summary issued by PIMS Hospital, Pondicherry, in the name of P.W.1/appellant in C.M.A.No.725 of 2014 on 26.11.2002, i.e., 3 months after the accident. In Ex.P6 also, it has been stated that accident occurred only due to involvement of Tata Sumo car. The Tribunal took note of the fact that appellant in C.M.A.No.725 of 2015 was a student studying Computer Science in College, was fully conscious when he was admitted in Hospital and gave statement with regard to the accident to the Hospital Authority mentioning about involvement of Tata Sumo car with Registration Number of the car as TN 32 V 2829.

17.In addition to that, the 2nd respondent - Insurance Company examined one Meena Priyadharshini, who is the Revenue Divisional Officer as R.W.5, who filed Ex.R11 / Report for grant of cash relief issued by R.D.O., Tindivanam to the II Additional District Court, Tindivanam. Ex.R11 is the document containing details of application made by P.W.4 / 1st appellant in C.M.A.Nos.728 & 731 of 2014 for solatium. P.W.4 / 1st appellant in C.M.A.Nos.728 & 731 of 2014 claimed solatium for the death of her husband Masthan and her son Shiek Ahmed. In the said application, she has stated that due to the accident caused by Tata Sumo car, her husband Masthan and son Sheik Ahmed died. The application containing these facts were endorsed by the Deputy Superintendent of Police. Based on the said application, P.W.4 was paid a sum of Rs.10,000/- each for the death of her husband Masthan and her son Sheik Ahmed. Contrary to the said application dated 21.11.2002, P.W.4 has stated that accident has occurred due to rash and negligent driving by the driver of the Tata Safari Car bearing Registration No.TN 20 J 2727. In the cross examination she has admitted that what she has stated in the application are true, based on which she was paid solatium.

18.A combined reading of Exs.P1, P6 and R11, it is clear that injuries and death of two persons were only due to rash and negligent driving by the driver of the Tata Sumo car. The contention of the learned counsel appearing for the appellants that Tribunal erred in dismissing the claim petitions relying on

Ex.P1 / F.I.R. and Ex.P6 / discharge summary, instead of accepting the oral evidence let in by the claimants on oath is without merits. It is no doubt true that contents of F.I.R. is not final to fix the negligence and liability on the owner of vehicle and Insurance Company. But more credit must be given to oral evidence let in before the Tribunal on oath. This is general principle. In the present case, the complaint was given within 6 hours of the accident by an eyewitness, who is the son and brother of the two deceased persons, who died in the same accident. The appellants have not examined the said complainant as witness, but deny the contents in the F.I.R. The Police has filed the final report and the learned Judge considered the said final report and found that in the final report, it has been stated that the accident has occurred due to involvement of both the vehicles. The Inspector of Police was not examined to speak about the final report. There is nothing on record to show that to whom the Investigating Officer enquired, to come to the conclusion that Tata Safari car was involved in the accident. Similarly, no record was produced to show that final report was filed before the concerned Judicial Magistrate and taken on file. The 2nd respondent/Insurance Company took steps for examining the Investigating Officer and Tribunal issued summons to the Investigating Officer. The Station Head Officer refused to receive the summons issued by the Tribunal. In such circumstances, the Tribunal came to a conclusion that Investigating Officer is not willing to assist the Court. The learned counsel for 2nd respondent – Insurance Company contended that the 1st respondent and owner of the Tata Sumo car are brothers and they in collusion with Police, falsely implicated the Tata Safari car and 1st respondent. The 1st respondent remained exparte before the Tribunal and the contention of the 2nd respondent was not controverted by the 1st respondent.

19.Further, it is the case of the 2nd respondent that Tata Sumo car was not having Insurance Policy at the time of accident and therefore in collusion with 1st respondent, who is the brother of owner of the Tata Sumo car and with Police, the Tata Safari car was falsely implicated. From Ex.P2 / Motor Vehicle Inspector's report of Tata Sumo car, it is seen that the said vehicle was inspected by the Motor Vehicle Inspector within 2 days from the date of accident and in the said report, it has been stated that the Tata Sumo car was heavily damaged and details of damages were given in the said report. The Motor Vehicle Inspector has mentioned in the said report that Tata Sumo car was insured on the date of accident, but he added that he did not see the Insurance Policy. The 2nd respondent examined one Gunasekaran, Motor Vehicle Inspector as R.W.1, who has deposed that it is his duty to verify the Insurance Policy before issuing report, but in this case, he did not see the

Insurance Policy. The 2nd respondent also examined one Niranchan Anandhan as R.W.2 - staff from National Insurance Company, who deposed that Tata Sumo car was insured with them only for the period commencing from 04.12.2002 to 03.12.2003 and on the date of accident, i.e., on 26.08.2002, the Tata Sumo car was not insured with them. The Tata Safari car was sent for inspection only on 31.12.2002, on the date of filing of all the claim petitions. In Ex.P3 / Motor Vehicle Inspector's report of Tata Safari car, there is no mention of damage found in the Tata Safari car. From the evidence on record, it is seen that the 2nd respondent has let in sufficient evidence to prove that the Tata Safari car was not involved in the accident. In view of the same, the 2nd respondent - Insurance Company is not liable to pay any compensation to the claimants. The Tribunal considered all the materials, both oral and documentary evidence in proper perspective and rightly held that the Tata Safari car belonging to 1st respondent and insured with 2nd respondent was not involved in the accident and respondents 1 & 2 are not liable to pay any compensation to the appellants. There is no error in the said award of the Tribunal warranting interference by this Court.

20.In the result, all the Civil Miscellaneous Appeals are dismissed confirming the order of dismissal dated 18.04.2013 made in M.C.O.P.Nos.340 to 347 of 2006 & 84 of 2007. Consequently, the connected Miscellaneous Petitions are closed. No costs.

Sd/-
Assistant Registrar(CS-I)

//True Copy//

Sub Assistant Registrar

krk

To
1. The learned II Additional District Judge,
   Motor Accidents Claims Tribunal,
   Tindivanam.
2. The Section Officer,
   VR Section,
   High Court, Madras.

+1cc to M/s.S.Arunkumar, Advocate, S.R.No.61278

C.M.A.Nos.725 to 733 of 2014

VBM(CO)
RLP(24/01/2022)