



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.03.2021

CORAM:

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN
C.M.A.No.732 of 2017

Messers Royal sundaram Alliance Insurance Co.Ltd.,
46, Whites Road, Chennai-600 014. ...Appellant/2nd Respondent

Vs

1.P.Vasanth

2.Minor Saranya
D/o.Palanivel

3.Minor Surendar
S/o.Palanivel
(Minors rep by their mother of next friend
P.Vasanth)

4.Chinnammal

5.C.Suresh ...Respondents/Petitioners 1 to 4 &
1st Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act against the Judgment and Decree made in M.C.O.P.No.153 of 2004 on the file of the Motor Accident Claims Tribunal (Subordinate Judge) at Sankagiri dated 24.04.2012.

For Appellant : Mr.M.Krishnamoorthy

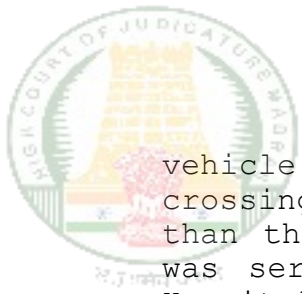
For Respondents : Mr.C.Kulandaivel for R1 to R4

No appearance for R5

J U D G M E N T

This Civil Miscellaneous Appeal is filed by the Insurance Company on the ground that the Tribunal erroneously allowed the claim petition filed with false information against the vehicle which was not involved in the accident.

2. The brief facts of the case is that on 26.06.2004 at about 10.00 p.m., the deceased Palanivel was on the pillion of the motorcycle driven by one Suresh. He was thrown out of the



vehicle when the rider of the motorcycle tried to avoid the dog crossing the road suddenly. The said rider Suresh is none other than the brother-in-law of the deceased. The deceased Palanivel was seriously injured and was first taken to the Government Hospital, Sankagiri and then he was taken to a private hospital viz., A.G.Neuro Centre Hospital, Salem and thereafter, he was shifted to K.G. hospital, Coimbatore.

3. Two days later, complaint about the accident was given by Suresh on 28.06.2004, based on which, FIR was registered. The deceased Palanivel was admitted in the K.G. hospital, Coimbatore and succumbed to injuries on 01.07.2004. The claim petition was filed by the claimants attributing negligence on the part of the motorcycle rider. The Tribunal after considering the evidence placed before it has awarded a sum of Rs.8,60,000/- as compensation.

4. In this appeal, the Insurance Company has taken a specific plea that as per the intimation which is marked as Ex.R1 given to the police by the K.G. Hospital, the accident occurred on 24.06.2004 at 9.00 p.m.,. Whereas, the FIR registered by the police on 28.06.2004, states that the accident occurred on 26.04.2004. The informant is none other than the brother-in-law of the deceased. He has given a wrong date to get compensation fraudulently. The delay in filing FIR coupled with the facts that the FIR reached the concerned Judicial Magistrate Court after 15 days will go to show that place and the narration of the accident as found in the claim petition and the FIR is not true.

5. The learned counsel for the Insurance Company/appellant would draw the attention of this Court that the Ex.R1- the intimation to the police from K.G. Hospital, the date and time of the accident is mentioned as 24.06.2004 at 9.00 a.m. But this Court that the date and month there is over writing. The Magisterial Clerk who was examined as RW.3 and had deposed that the First Information Report copy received by the Court on 07.07.2004, in case of grave and fatal accident, Express FIR has to be forwarded to the Judicial Magistrate Court within 24 hours. In this case the accident alleged to have been happened on 26.04.2004. The FIR was lodged after the delay of 2 days by the relative of the victim, who is none other than the tort-feasor. Due to the suspicious circumstances clouded around the claim petition, the Insurance Company has given a complaint to the CBCID and the matter has been taken investigation by the CBCID. This facts is reflected from communication marked as Ex.R3, Ex.R4 and Ex.R5. The Insurance Company has engaged an independent investigator and the said investigator has given his report and same is marked as Ex.R8 and the author of the report RW.2 has also examined. The doubt regarding the accident as alleged in the claim petition and the date of accident is being



high lighted in the report. Therefore, the learned counsel for the Insurance Company would submit that the claim itself is a fake claim which ought not to have been entertained, but the Tribunal has over looked the inherent defect in the claim petition and has allowed awarding Rs.8,60,000/- as compensation.

6. The case of the learned counsel appearing for the claimants is that the accident occurred when the deceased was travelling on the pillion along with her brother-in-law Suresh. He was taken to Government Hospital, Sankagiri and then to A.G.Neuro Centre Hospital, Salem. Thereafter, shifted to K.G. Hospital, Coimbatore. The intimation report Ex.R1 which is relied by the Insurance Company to project the claim petition is a fake, on examination will reveal that the date and time of accident mentioned in Ex.R1 has been altered from '26' to '24' and the month is altered from 07 to 06 and there is no explanation why it was altered. Hence, the Tribunal has rightly pointing out this alteration wrongly crept in the document and it is not a material evidence to disallow the claim petition.

7. On appeal, this Court after considering the rival submissions, the material evidence placed by the claimants show that when the deceased Palanivel was travelling in a two wheeler driven by Suresh as a pillion rider, died unnaturally. There is no contra evidence let in by the Insurance Company to disbelieve these facts. The investigator report Ex.B8 does not give any concrete material to hold that the accident occurred only on 24.06.2004 and not on 26.06.2004. The suspicion regarding the date of accident mentioned in the claim petition is that the rider of the two wheeler Suresh who also claimed to have sustained injury not taken any treatment either on G.H., Sankagiri or any other hospital immediately after the accident. If really the accident occurred on 24.06.2004, rider Suresh and the pillion rider deceased Palanivel, the investigator should have got some medical record for their treating before 26.06.2004. Absence of medical record regarding treatment taken by Suresh had caused strong suspicious in the mind of investigator-RW.2 that the accident might not have happened in the manner as stated in the claim petition.

8. Whether the said suspicion is valid, it is necessary to look at the FIR given by Suresh. In the FIR Suresh has stated that he was taking care of his brother-in-law, who was seriously injured in the accident. Therefore, he was moving from one hospital to another, only on 28.06.2004 on his return from K.G. hospital, he took treatment for his injury and in the hospital his statement was recorded by the police which is the basis of the First Information Report.

9. When there is plausible explanation given by the claimants for delay in lodging FIR. The administrative delay in



forwarding the Express FIR the concerned Magistrate will not be a suspicious circumstance against to the claimants.

10. Furthermore, it is to be noted that after lodging the complaint to CBCID regarding the suspicious claim petition, till date, there is no material progress in the investigation to show the present claim petition is a fake claim petition.

11. In the said circumstances just because the tort-feasor is close relative to the claimants, the petition cannot be turned down as a fake claim petition. The facts and circumstances indicates that the deceased Palanivel died in a motor accident and the said motor vehicle while travelling on the pillion of a motorcycle was owned by the 1st respondent and insured under the 2nd respondent.

12. For the said reason, this Court is of the view that on a weak piece of evidence viz., a corrected entry in the intimation to the police given by the K.G. hospital, the case of the claimants cannot be negatived. Hence, this Civil Miscellaneous Appeal is dismissed. No costs.

13. The learned counsel for the appellant reports that the entire award amount with accrued interest already deposited in the MCOP account. If it is so, the claimants are permitted to withdraw the same on appropriate application.

Sd/-
Assistant Registrar (CS-V)

//True copy//

Sub Assistant Registrar

rpl

To

The Motor Accident Claims Tribunal,
(Subordinate Judge), Sankagiri

+1cc to Mr.C.Kulandaivel, Advocate SR.No.15321

+1cc to Mr.M.Krishnamoorthy, Advocate SR.No.15605

C.M.A.No.732 of 2017

AJS (CO)
GMY (07/09/2021)