



**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

**DATED : 16.02.2021**

**CORAM:**

**THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM**

C.M.A(MD)No.1207 of 2011

S.Viswanathan : Claimant/Appellant

Vs.

1.Muthu Krishnan

2.S.Maria Arul Jothi

3.United India Insurance Co., Ltd.,  
Xavier Building,  
II Floor, PWD Road,  
Post Box No.50,  
Nagercoil,  
Nagercoil Village,  
Kanyakumari District.

: Respondents/Respondents

**PRAYER:** Civil Miscellaneous Appeal has been filed under Section 173 of Motor Vehicles Act, to set aside the judgment and decree dated 31.12.2009 passed in M.C.O.P.No.21 of 2008 on the file of the Motor Accidents Claims Tribunal and Chief Judicial Magistrate Court, Nagercoil and allow this Civil Miscellaneous Appeal.

|               |                                                  |
|---------------|--------------------------------------------------|
| For Appellant | : Mr.P.Prabhakaran                               |
| For R1        | : dismissed vide Court order<br>dated 10.04.2019 |
| For R2        | : Mr.G.Aravinthan                                |
| For R3        | : Mr.A.S.Mathiyalagan                            |

**JUDGMENT**

The claimant is the appellant in this appeal. The claim petition filed by him, before the Motor Accidents Claims Tribunal and Chief Judicial Magistrate Court, Nagercoil in M.C.O.P.No.21 of 2008, came to be dismissed, wherein, the Tribunal found that the vehicle is not involved in the accident.

2.Heard Mr.P.Prabhakaran, learned counsel appearing for the appellant, Mr.G.Aravinthan, learned counsel appearing for the second respondent and Mr.A.S.Mathiyalagan, learned counsel appearing for the third respondent and perused the materials available on record.



3. The case of the claimant in brief is that on 29.10.2006 at about 5.30 p.m., when he was proceeding on the Balamore road in Nagercoil, the motorcycle, driven by the first respondent owned by the second respondent and insured with the third respondent bearing Registration No.TN-74-E-5380, came in a rash and negligent manner and hit against him. In the impact, he fell down and he suffered multiple injuries and became unconscious. Immediately, he was taken to Thiraviyam Hospital, Nagercoil. The Hospital authorities informed to the police and the police came and enquired him with regard to the accident. So, he is entitled for compensation of Rs.5,00,000/-.

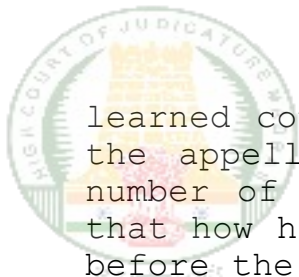
4. The owner as well as the insurer of the two-wheeler contested the claim petition stating that the vehicle was not involved in the accident and the claim was excessive and prayed for dismissal of the claim petition.

5. Before the Tribunal, the claimant himself gave evidence as P.W.1 and reiterated the averments made in the claim petition. He also produced the documents as Ex.P1 to Ex.P7. On the side of the respondents, Mr.Madhavan was examined as R.W.1 and marked Ex.R1 to Ex.R3. After analysing the evidence adduced by the parties, the Tribunal came to the conclusion that, the vehicle of the second respondent was not involved in the accident and rejected the claim petition. Challenging the said findings, the claimant has preferred the present appeal.

6. In the matter on hand, a perusal of records would show that the claimant/appellant sustained injuries in the accident that had taken place on 29.10.2006. It is not in dispute that he was admitted in Thiraviyam Orthopaedics Hospital. On receipt of intimation from the hospital, the investigation wing reached the hospital immediately and obtained the statement from the appellant to the effect he was hit by a two-wheeler. However, he did not mention the registration number of the vehicle. Since, the police did not register a case, he filed a petition in CrI.O.P.No.12550 of 2007 seeking direction to the police to register a case, but this Court disposed of the petition directing the petitioner to approach the concerned Magistrate Court.

7. It appears that the claimant has approached the Magistrate Court under Section 156(3) Cr.P.C., and the Magistrate also issued a direction. Though the police registered a case based on the direction issued by the Magistrate, after investigation, closed the same as 'mistake of fact'.

8. It is the contention of the learned counsel for the appellant that in the FIR itself vehicle number has been given, but the closure of the case as 'mistake of fact' would not stand in the way of the appellant to claim compensation against the owner and



learned counsel for the appellant, but in the matter on hand, when the appellant was examined by the police, he could not give the number of the vehicle. Further, no material was produced to show that how he was able to mention the vehicle number in the complaint before the Magistrate Court. Furthermore, admittedly, the police has closed the case as 'mistake of fact' stating that the vehicle No.TN-74-E-5380 was not involved in the accident. A perusal of records reveals that except the claimant, no other witnesses were examined to prove that the vehicle No.TN-74-E-5380 was infact involved in the accident.

9. In the light of the above facts, I find no reason to interfere with the findings of the Tribunal. In fine, the appeal fails and the same is dismissed. No costs.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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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 Motor Accidents Claims Tribunal and  
Chief Judicial Magistrate Court, Nagercoil

2.The Section Officer, (2 copies)  
V.R. Section,  
Madurai Bench of Madras High Court,  
Madurai.

+1 CC to Mr.A.S.MATHIALAGAN, Advocate ( SR-5571[F] dated 17/02/2021 )

+1 CC to Mr.P.PRABHAKARAN, Advocate ( SR-5812[F] dated 18/02/2021 )

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VB (05.03.2021) 3P 6C

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