



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reservation	01.02.2021
Date of Judgment	17.04.2021

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THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLIC.M.A(MD)No.1154 of 2013

The Manager,
M/s.ICICI Lombard General Insurance Company Ltd.,
Zenith House,
Keshav Rao Khade Marg,
Mahalakshmi,
Mumbai-400 034.

: Appellant/2nd Respondent

Vs.

1.S.Ravi : 1st Respondent/Petitioner
2.Balasubramanian : 2nd Respondent/1st Respondent

PRAYER:- Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988 against award, dated 18.06.2012 passed by the Motor Accident Claims Tribunal (Additional Sub Court), Karur, in MCOP No.66 of 2009.

For Appellant : Mr.S.Srinivasa Raghavan
For 1st Respondent : Mr.K.Suresh Kumar
For 2nd Respondent : Ex-parte,
Vide Order,
dated 20.02.2018

J U D G M E N T

This appeal has been filed challenging the award, dated 18.06.2012 passed by the Motor Accident Claims Tribunal (Additional Sub Court), Karur, in MCOP No.66 of 2009.

2.The brief facts of the case is that on 23.12.2008 at about 6.30 pm, the claimant was travelling as a pillion rider in Honda Shine Motor Cycle TN-47-S-7945, which was driven by one Balasubramanian and when they were proceeding from Kongu Mess to Reddipalayam road, the rider of the motor cycle applied sudden brake, resulting which, the claimant fell down and sustained grievous injuries over his right shoulder and injuries all over the body. The claimant was admitted in K.G Hospital, Karur and then, he was taking treatment in Ganga Hospital, Coimbatore. The injured claimant filed a claim petition seeking compensation of Rs.5,00,000/- on the ground that the rider of the motor cycle caused

the accident.

3. In the counter filed by the Appellant Insurance Company, they disputed the manner of accident and their liability to pay compensation.

4. The Tribunal, on consideration of oral and documentary evidence adduced by the parties, came to the conclusion that the rider of the motor cycle, caused the accident and awarded compensation of Rs.1,20,500/- together with interest @ 7.5% p.a.

5. Heard both sides and perused the materials available on record.

6. The learned counsel appearing for the appellant/2nd respondent submitted that the accident took place in other ways has been fraudulently foisted against the owner of the vehicle, in which the claimant travelled and the criminal case was closed as "Mistake of Fact" and on coming to know that the complaint was a false one, Exs.R1 and R2 were produced through the appellant by the mode known to law and the reasons for discarding the same by the tribunal is not correct and the accident is not a genuine one and hence, the Appellant Insurance Company is not liable to pay the compensation. But on the other hand, on the side of the 1st respondent/claimant, it is argued that only due to the rash and negligent driving of the rider of the motor cycle, the accident occurred and the owner of the vehicle has not taken any action for the criminal case registered against him and to prove that the accident was not happened, no witness was examined and the accident is a genuine one and hence, the appellant Insurance company is liable to pay the compensation.

7. In this case, in respect of the accident, the claimant gave Ex.P1 complaint to the Police. On the basis of the complaint, a criminal case was registered as against the rider of the two wheeler, in which the claimant travelled. No document was filed on the side of the appellant Insurance Company to prove that the final report filed by the police was accepted and on the basis of the final report, the criminal case registered in respect of the accident was closed as "Mistake of Fact." On perusal of the final report, on the basis of the statement by some persons, the criminal case was closed as "Mistake of Fact." The name of the persons, who stated that there was no accident as alleged, were not stated in the final report. No steps were taken on the side of the appellant Insurance Company to examine any witness to prove that there was no such accident took place as alleged.

8. In this case, RW1 and RW2 are not the eye witnesses. Further, the final report filed in a criminal case will not bind the proceedings of the tribunal. In this case, PW1 stated that after the accident, he was admitted in KG, Hospital, Karur and then, he was taken treatment in a private Hospital at Coimbatore. It is to be noted that the Wound Certificate issued by the KG Hospital, Karur



was marked as Ex.P2. On perusal of Ex.P2, it is stated that on 23.12.2008, the claimant sustained injuries, while he was travelling in a two wheeler as pillion rider and he sustained injuries in the accident. Ex.P2 is the earliest document. Hence, from Ex.P2, it reveals that the claimant has sustained injury in the road accident that took place on 23.12.2008. Hence, this court is of the view that the accident has occurred only due to the rash and negligent driving of the rider of the motor cycle namely the 2nd respondent herein. Since the motor cycle was insured with the appellant Insurance Company, at the time of accident, the tribunal has rightly fastened the liability on the appellant Insurance Company as well as the owner of the motor cycle.

9.Insofar as the quantum of the compensation awarded by the tribunal, the tribunal, after perusing the entire records available on record, has awarded Rs.1,20,500/- towards compensation to the injured together with interest at the rate of 7.5% p.a, which according to this court, is correct and no need to interfere with the same.

10.In the result, this Civil Miscellaneous Appeal is dismissed, confirming the award of the tribunal. No costs.

Sd/-

Assistant Registrar (T&P)

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/ /2021

Sub Assistant Registrar(CS)

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To,

1.The Motor Accident Claims Tribunal/
The Additional Sub Court, Karur.

2.The Record Keeper,
VR Section,
Madurai Bench of Madras High Court,
Madurai.(2c)

+1 CC to M/s.K.SURESH KUMAR, Advocate (SR-16682[F] dated 20/04/2021)

+1 CC to M/s.S.SRINIVASA RAGHAVAN, Advocate (SR-16204[F] dated 17/04/2021)

Judgement made
in CMA(MD)No.1154 of 2013
17.04.2021