



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.02.2021

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.M.A (MD) No.1527 of 2010

WEB COPY

C.Kumar Selvin : Claimant/Appellant
Vs.
1.S.Sudersanan
2.B.Mohan
3.S.Anil Kumar
4.The Branch Manager,
The National Insurance Company ltd.,
Thiruvananthapuram,
Kerala State.
5.The Branch Manager,
The New India Assurance Company Ltd.,
Thiruvananthapuram,
Kerala State.
6.The Branch Manager,
The New India Assurance Co Ltd.,
Nagercoil,
Kanyakumari District. : Respondents/Respondents

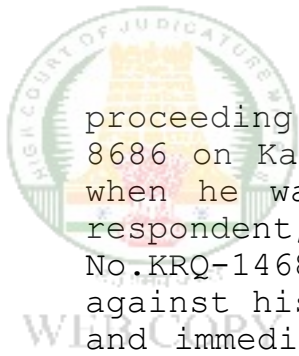
PRAYER: Civil Miscellaneous Appeal has been filed under Section 173 of Motor Vehicles Act, to call for the records and set aside the judgment and decree passed in M.C.O.P.No.150 of 2001 dated 14.06.2010 on the file of the Motor Accident Claims Tribunal (Principal Sub Court), Nagercoil.

For Appellant : Mr.F.Deepak
For R1 : dismissed vide Court order
dated 20.02.2012
For R2 & R3 : No appearance
For R4 to R6 : Mr.J.S.Murali

JUDGMENT

This appeal has been filed by the claimant challenging the judgment passed by the Motor Accident Claims Tribunal (Principal Sub-Court), Nagercoil in M.C.O.P.No.150 of 2001.

<https://hcservices.courts.gov.in/hcservices> The facts in brief are that on 28.07.1996 the claimant was



proceeding in a bulloet Motorcycle bearing Registration No.TN-74-B-8686 on Kanyakumari - Nagercoil road from North to South direction, when he was proceeding near Ganaga Textiles at Kottar, the third respondent, who was riding the motorcycle bearing Registration No.KRQ-1468 from opposite direction, came in a high speed and dashed against his motorcycle. As a result, he sustained grievous injuries and immediately, he was taken to Government Head Quarters Hospital at Nagercoil and thereafter, he took treatment at Mathias Hospital at Nagercoil. According to the claimant, the respondents 1 & 2 are the owners of the motorcycle bearing Registration No.KRQ-1468. The third respondent was the dirver of the said vehicle and the fourth respondent is the insurer of the said vehicle. The claimant is the owner of the motorcycle bearing Registration No.TN-74-B-8686 and R5 & R6 are the insurers of the claimant's vehicle. They are liable to pay compensation.

3. The claim petition was resisted by the respondents disputing the manner of the accident and their liability to pay compensation.

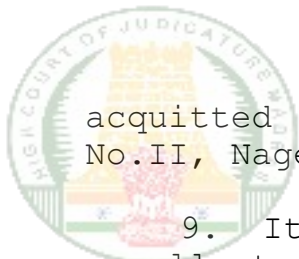
4. To prove the negligence, the claimant gave evidence as P.W.1. In support of his oral evidence, he produced Ex.P1-observation mahazar, Ex.P2-sketch, Ex.P3-report of the Motor Vehicle Inspector. The third respondent was examined as R.W.1 and in his evidence, he has stated that on 28.07.1996 at 11.45 p.m., when he was pushing the vehicle No.KRQ-1468 at the left side on Nagercoil-Kanyakumari road near Ganaga Textiles at Kottar, the petitioner, who was riding the motorcycle bearing Registration No.TN-74-B-8686, came in a rash and negligent manner and rammed the motorcycle, in which, he was sustained injury.

5. The Tribunal, taking note of the fact that the criminal case was registered against the claimant, the claim petition was filed after a lapse of 4 years and no other evidence except P.W.1 produced to prove the negligence, dismissed the claim petition. Questioning the said findings, the present appeal has been filed.

6. Heard Mr.F.Deepak, learned counsel appearing for the appellant and Mr.J.S.Murali, learned counsel appearing for the respondents 4 to 6 and perused the materials available on record.

7. In the instant case, it is not in dispute that the claimant sustained injury in the accident that had taken place on 28.07.1996, but the question is how he sustained injury. It is the case of the claimant that on a fateful day, he was proceeding from North to South direction on Kanyakumari - Nagercoil road and at the time, the vehicle driven by the third respondent from opposit direction dashed against the motorcycle.

8. Admittedly, the claimant did not prefer any complaint against the third respondent and on the other hand, a criminal case was registered against the claimant/appellant herein and he was also



acquitted in the criminal case by the learned Judicial Magistrate No.II, Nagercoil in C.C.No.622 of 1997.

9. It is the submission of the learned counsel for the appellant that standard of proof before the Criminal Court and the Tribunal is totally different and proof of preponderance of probabilities is sufficient and the negligence need not be proved beyond reasonable doubt. The decision of the Hon'ble Apex Court reported in **Live Law in Civil Appeal os.4010-4011 of 2020 in Anita Sharma & Ors. Vs. The New India Assurance C. Ltd., & Anr**, is relied on in support of his contentions, wherein the Hon'ble Apex Court at paragraph-22 has held as follows:-

"22. Equally, we are concerned over the failure of the High Court to be cognizant of the fact that strict principles of evidence and standards of proof like in a criminal trial are inapplicable in MACT claim cases. The standard of proof in such like matters is one of preponderance of probabilities, rather than beyond reasonable doubt. One needs to be mindful that the approach and role of Courts while examining evidence in accident claim cases ought not to be to find fault with non-examination of some best eye-witnesses, as may happen in a Criminal trial; but, instead should be only to analyze the material placed on record by the parties to ascertain whether the claimant's version is more likely than not true. A somewhat similar situation arose in Dulcina Fernandes v. Joaquim Xavier Cruz wherein this Court reiterated that:

7. It would hardly need a mention that the plea of negligence on the part of the first respondent who was driving the pick-up van as set up by the claimants was required to be decided by the learned Tribunal on the touchstone of preponderance of probabilities and certainly not on the basis of proof beyond reasonable doubt."

10. There is no dispute with regard to the proposition suggested by the learned counsel for the appellant. But in the case on hand, whether the claimant has proved the preponderance of probabilities is the question. For the injuries sustained in the accident on 28.07.1996 the claim petition came to be filed after a lapse of 4 years. In the course of cross-examination P.W.1 has admitted that he did not prefer any complaint. The Tribunal found that the testimony of P.W.1 was untrustworthy. That apart, no witness was examined to corroborate the evidence of P.W.1. The mere fact that the claimant was acquitted in the criminal case cannot be a ground to hold that the driver of the opposite vehicle was negligent at that relevant time and it is for the claimant to prove the same at least on preponderance of probabilities. Considering the above aspects, the Tribunal held that the accident did not take place as



projected by the claimant. So, I find no reason to interfere with the findings of the Tribunal and hence, the appeal fails and it is dismissed. No costs.

Sd/-

Assistant Registrar (CO)

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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 Accident Claims Tribunal
(Principal Sub Court), Nagercoil.

2.V.R. Section,
Madurai Bench of Madras High Court,
Madurai.(2C)

+1 CC to M/s.F.DEEPAAK, Advocate (SR-6818[F] dated 24/02/2021)

+2 CC to M/s.J.S.MURALI, Advocate (SR-7151[F] dated 25/02/2021)
(SR-7152[F] dated 25/02/2021)

C.M.A(MD)No.1527 of 2010
23.02.2021

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SSS(CO)

KK(18.03.2021) 4P 7C