



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED 20.04.2021

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THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.M.A(MD)No.713 of 2009

New India Assurance Co. Ltd.,
Through its Divisional Manager,
Door No.34/55, Kongu Complex,
Bye Pass Road, Tharapuram Taluk.

.. Appellant/2nd Respondent

vs.

1.Chinnadurai

..1st Respondent/Petitioner

2.A.Subramanian

..2nd Respondent/1st Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act 1988 against the Judgment and decree dated 02.07.2008 passed in MACOP No.484 of 2002 on the file of the Motor Accident Claims Tribunal, (Sub-Court), Palani.

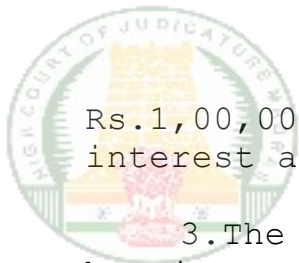
For Appellant : Mr.G.Prbhu Rajadurai

For Respondent : Mr.J.Lawrance (for R1)
R-2 Dispensed with

J U D G M E N T

Aggrieved over the award passed by the Motor Accident Claims Tribunal, Sub-Court, Palani in MCOP No.484 of 2004, this appeal has been filed by the Insurance Company.

2.The first respondent is the injured claimant. According to him, on 09.10.2002 at 01.30 p.m, he was riding a TVS-50 motorcycle bearing registration No.TN-57-X-5870, in which, his relative Rajendran was a pillion rider and they were proceeding near cooperative society in Kanakkanpatti on Palani-Dindigul main road. At that time, an Yamaha motorcycle bearing registration No.TN-57-X-7540, which was coming on the same direction, hit against his vehicle. In the impact, he sustained injuries. Immediately, he was taken to Palani Government Hospital. In this regard, a criminal case was registered against the driver of the Yamaha motorcycle in Crime No.426 of 2002 on the file of the Ayakkudi Police Station. Although he sought for compensation of



Rs.1,00,000/-, the Tribunal has awarded Rs.33,000/- along with interest at the rate of 7.5% per annum.

3.The case of the appellant is that the Yamaha motorcycle bearing registration No.TN-57-X-7540 was not involved in the accident and it was subsequently implicated in this case to make a false claim against the insurance company. The claim petition is liable to be dismissed since the necessary parties i.e, owner and insurer of the TVS-50 was not added as parties to the claim petition.

4.In order to establish the case of the claimant, he examined three witnesses and marked 6 documents. The appellant examined two witnesses and produced Ex.R1. After analyzing the evidence of oral and documentary referred above, the Tribunal came to the conclusion that the rider of the Yamaha motorcycle was responsible for the accident and awarded compensation as stated supra. Questioning the same, the present appeal has been filed.

5.Heard Mr.G.Prabhu Rajadurai, learned counsel for the appellant and Mr.J.Lawrance, learned counsel for the first respondent and perused the materials available on record.

6.In the instant case, the claimant has proved that he sustained injuries in the accident that had taken place on 09.10.2002. It is the specific case of the claimant that when he was proceeding in the TVS-50, the offending vehicle came in the same direction and hit against his vehicle. The occurrence had taken place at 01.30 p.m on 09.10.2002. The First Information Report (Ex.P.1) was registered at 06.00 p.m on the same day, on the basis of the complaint of the claimant. A perusal of the First Information Report reveals that he has stated about the involvement of the Yamaha motorcycle. The documentary evidence corroborates the oral evidence of the claimant.

7.Further, R.W.1-Medical Officer in the Palani Government Hospital was examined by the appellant to establish that the claimant was dashed by a bicycle and in the accident, he sustained injuries. During the cross examination, R.W.1 Medical Officer has admitted that in the Accident Register, the involvement of the bicycle was mentioned in pursuance of the information given by one Mr.Duraisamy, which shows that the information recorded in the Accident Register was not furnished by the claimant. R.W.2 deposed that the offending vehicle Yamaha was not involved in the accident, however, he admitted in the cross examination that in the complaint (Ex.P.1), the number of the offending vehicle has been mentioned. So, the Tribunal has rejected the defence of the appellant and held that the accident occurred due to the involvement of the Yamaha motorcycle. In the light of the above



facts, I find no force in the contention of the learned counsel for the appellant and hence, the finding of the Tribunal is hereby confirmed.

8.Ex.P.2 to Ex.P.5 were produced by P.W.2 Natarajan, who was working as Record Clerk in the Palani Government Hospital. It is seen that the injured claimant had taken treatment as inpatient from 09.10.2002 to 12.10.2002. P.W.3 Dr.Shanmugaraja assessed disability of the claimant as 18%. So, the Tribunal has awarded Rs.18,000/- for the disability by applying Rs.1,000/- per one percentage. In addition, the Tribunal has awarded Rs.10,000/- towards pain and suffering; Rs.3000/- towards transportation and Rs.2,000/- for nutrition. The claimant did not produce any material for spending Rs.3,000/- towards transportation and hence, the award of Rs.3,000/- under the head of Transport Expenses is set aside. The claimant would be entitled Rs.30,000/- with interest at the rate of 7.5% per annum. Hence, the award amount is reduced to Rs.30,000/- from Rs.33,000/-.

9.In fine, this Civil Miscellaneous Appeal is partly allowed as indicated above. It is represented by the appellant Insurance Company that the entire award amount has already been deposited along with accrued interest and costs. Therefore, the claimant is permitted to withdraw the modified amount less the amount already withdrawn, if any, together with proportionate interest and costs. The excess amount shall be refunded to the appellant Insurance Company. No costs.

Sd/-

Assistant Registrar (AE)

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/ /2021

Sub Assistant Registrar (CS)

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To

1.The III Additional Sub Judge,
Motor Accident Claims Tribunal,
Palani.



2.The Record Keeper-2 copies
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to Mr.V.VENKATASAMY, Advocate (SR-16774[F] dated 21/04/2021)

+1 CC to Mr.G.PRABHU RAJADURAI, Advocate (SR-16823[F] dated 21/04/2021)

JUDGMENT MADE IN
C.M.A (MD) No.713 of 2009
20.04.2021

KM(27.05.2021) 4P 6C