



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED 20.04.2021

CORAM

WEB COPY

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.M.A(MD)No.912 of 2011

Vinothkumar

.. Appellant/Petitioner

vs.

1.Balasubramaniam

2.The Branch Manager,
National Insurance Company Limited,
T.S.No.4132, East Rajaveethi,
Pudukkottai Town.

...Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act 1988 to set aside the fair order and decretal order dated 28.10.2009 rendered in MCOP No.73 of 2003 on the file of the Motor Accidents Claims Tribunal (Additional District and Sessions Judge for E.C.Act Cases), Pudukkottai.

For Appellant	:	Mr.R.P.Ramachandran
For Respondents	:	Mr.N.Murugesan (for R2)
		No appearance (for R1)

J U D G M E N T

This appeal has been preferred against the order made in MCOP No.73 of 2003, wherein the claim petition filed by the appellant was rejected by the Motor Accident Claims Tribunal (Additional District and Sessions Judge for E.C.Act Cases), Pudukkottai.

2.The brief facts of the case are that the appellant along with one Ramalingam, who is the claimant in MCOP No.883 of 2003, travelled as pillion riders in TVS-50 bearing registration No.TN-63-Z-1689 on 24.10.2002 at 08.00 p.m from Thiruvappur to Sathiyamangalam. One Sasikumar was the rider of the vehicle. It is alleged that when they were proceeding on Pudukkottai-Trichy main road near Central I.T.I, a Van owned by the first respondent and insured with the second respondent herein was driven by its driver in a rash and negligent manner and hit against the TVS-50.

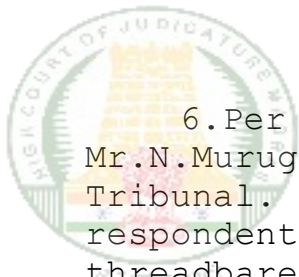


In the impact, the claimant sustained multiple injuries and fractures. Immediately, he was taken to the Pudukkottai Government Hospital, where he was given first aid and referred to Thanjavur Medical College Hospital for better treatment. He would further state that he was taking treatment as inpatient till 07.12.2002. It is the case of the claimant that he was 22 years old at the relevant point of time and he was earning Rs.3,500/- per month by doing carpentry work and contract work. So, he is entitled for compensation of Rs.5,00,000/-.

3.In the counter, age, occupation and monthly income claimed by the appellant herein was denied and disputed. It is further stated that in the First Information Report, TVS-50 number is mentioned as TN-63-B-4689 and false claim has been made against the owner and the insurer of the Van as it was not at all involved in the said accident. That apart, the claim petition is barred for non-jointer of necessary parties since the owner and the insurer of the TVS-50 was not impleaded as respondents and prayed for dismissal of the claim petition.

4.Before the Tribunal, on behalf of the appellant 3 witnesses were examined and 11 documents were marked. The second respondent herein examined 2 witnesses and marked 4 documents. On appreciation of the oral and documentary evidence, the Tribunal dismissed the claim petition stating that three persons travelled in the TVS-50 and the R.C Book of the vehicle, driving licence and insurance policy have not been produced and there was a delay in lodging the complaint. Challenging the said finding, the present appeal has been filed.

5.The learned counsel for the appellant Mr.P.R.Ramachandran would argue that the Tribunal has dismissed the original petition on surmises that the appellant/claimant and his friends have not at all involved in the accident by the offending vehicle. It is the contention of the learned counsel that the evidence of P.W.1 and P.W.3 and the document Ex.P.1 categorically proved that the appellant and his friends sustained injuries in the accident involved in the vehicle of the first respondent. It is also contended that the appellant herein is the owner of the vehicle, but the criminal case was registered based on the complaint of P.W.3 Ramalingam, who has originally mentioned the vehicle number as TN-63-H-4689, but later it was corrected as TN-63-Z-1689 and the correction made therein would no way affect the case of the appellant. Further, in the accident register, it is mentioned that the appellant sustained injuries due to the accident, but it was wrongly interpreted by the Tribunal as if they felled down from the TVS-50. So, the finding of the Tribunal is liable to be set aside.



6.Per contra, the learned counsel for the second respondent Mr.N.Murugesan made submission in support of the findings of the Tribunal. It is the submission of the learned counsel for the respondents that the Tribunal, after considering the evidence in threadbare, held that the claimant failed to prove the involvement of the vehicle of the first respondent and hence, no liability can be mulcted on the second respondent.

7.Heard the rival submissions and carefully perused the materials placed before this Court.

8.This is case of injury. Indisputably, three persons were travelled in a TVS-50 at the time of accident. The appellant, when he was giving evidence as P.W.1 has admitted that he is the owner of the TVS-50 and the rider of the moped Sasikumar was having valid driving licence, however, for the reasons best known to the appellant, the Registration Certificate of the moped, insurance policy and the driving licence of the rider were not placed on record. It is the specific case of the appellant that the driver of the Van bearing registration No.TN-55-B-4858 came in a high speed and rammed the moped at 08.30 p.m on 24.10.2002. Another pillion rider gave evidence in the same line as P.W.3, who was the claimant in MCOP No.883 of 2003. Both the claim petitions came to be rejected by a Common Judgment.

9.It is an admitted fact that a criminal case was registered against the driver of the first respondent on 25.10.2002. It is seen that the occurrence had taken place at 08.30 p.m on 24.10.2002, but the complaint was preferred on the very next day and the case was registered at 05.30 a.m on 25.10.2002. P.Ws.1 and 3 have deposed that immediately after the accident, they were taken to the Government Hospital and the complaint could have been received when they were under treatment. So, in such circumstances, it cannot be said that there was unexplained delay in lodging the complaint.

10.R.W.1, the Investigation Officer of the Insurance Company and R.W.2 the Senior Assistant in the office of the first respondent have stated that the vehicle of the first respondent herein was not involved in the accident. Ex.R1 is the Investigation Report of R.W.1. Exs.R.4 and R5 were marked in support of the case of the respondents that the injured fell down from the moped and sustained injuries. As rightly pointed out by the learned counsel for the appellant, in the accident register, it is stated that the injuries were due to the accident not by falling down. But the Tribunal has come to the conclusion that the claimant felled down from the TVS-50 and sustained injuries. It is seen that the driver of the offending vehicle was not examined and its owner also remained ex-parte.



11.A perusal of the records would show that P.W.1 and P.W.3 have given evidence categorically stating about the involvement of the vehicle of the first respondent. That apart, the criminal case registered against the driver of the vehicle without any delay. So, the reasons assigned by the Tribunal that the claimant failed to prove the involvement of the vehicle of the first respondent cannot be countenanced. So, I am of the opinion that the driver of the first respondent was responsible for the accident. It is also pertinent to note that a Division Bench of this Court has held that merely because three persons travelled in a two wheeler, it cannot be concluded that they were negligent at the time of accident. So, finding of the Tribunal on negligence is set aside.

12.Insofar as the quantum is concerned, Ex.P.2 discharge summary reads that the appellant herein took treatment as inpatient from 24.10.2002 to 07.12.2002. In addition, Ex.P.3 case sheet, Exs.P.4 to P.8 X-rays, medical bills have been produced. P.W.2 Dr.Ravikumar, in his evidence, has stated that the claimant has sustained permanent disability and the disability certificate issued by him has been marked as Ex.P.9. Considering the nature of injury and treatment, this Court awards Rs.60,000/- towards permanent disability; Rs.1200/- towards medical expenses; Rs.20,000/- towards pain and suffering and Rs.10,000/- for attendant charges. In total, it comes Rs.90,200/- and the same is rounded off Rs.90,000/-. Therefore, the appellant/claimant is entitled to Rs.90,000/- along with interest at the rate of 6% per annum from the date of filing of the appeal till the date of realization.

13.In the result, this Civil Miscellaneous Appeal is partly allowed as indicated above. The second respondent-Insurance Company is directed to deposit the entire award amount with accrued interest and costs within a period of eight weeks from the date of receipt of a copy of this order. On such deposit, the claimant is permitted to withdraw the amount together with proportionate interest and costs. No costs.

Sd/-

Assistant Registrar ()

// True Copy //

/ /2021

Sub Assistant Registrar(CS)



skn

To

1.The Additional District and Sessions Judge for E.C.Act Cases,
Motor Accident Claims Tribunal
Pudukkottai.

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

+1 CC to Mr.R.P.RAMACHANTHRAN, Advocate (SR-16800[F] dated
21/04/2021)

+1 CC to Mr.N.MURUGESAN, Advocate (SR-16995[F] dated
22/04/2021)

JUDGMENT MADE IN
C.M.A(MD)No.912 of 2011
20.04.2021

KM(02.06.2021) 5P 6C