



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 27.04.2021

Delivered On : 23.06.2021

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THE HONOURABLE MRS. JUSTICE R. THARANI

C.M.A. (MD)No.708 of 2013

The Branch Manager,
National Insurance Company Limited,
Dindigul.

..Appellant/2nd Respondent

Vs.

1.Chellappa Gounder ... 1st Respondent/Petitioner
2.Bhatatharaj ... 2nd Respondent/1st Respondent
(Second respondent is set exparte
in the lower Court itself)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to set aside the judgment and decree dated 08.08.2011 and made in M.C.O.P.No.261 of 2004 on the file of the Motor Accidents Claims Tribunal/Sub Court, Palani.

For Appellant	: Mr.R.Srinivasan
For 1 st Respondent	: Mr.D.Venkatesh
For 2 nd Respondent	: Set Exparte

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the award passed in M.C.O.P.No.261 of 2004 dated 08.08.2011, on the file of the Motor Accidents Claims Tribunal/Sub Court, Palani.

2.The appellant herein is the second respondent, the first respondent herein is the claimant and the second respondent herein is the second respondent in the claim petition. The claimant has filed a claim petition in M.C.O.P.No.261 of 2004, claiming compensation for the injuries sustained by the claimant in an accident that took place on 22.08.2004. The Tribunal has awarded a sum of Rs.85,000/- (Rupees Eighty Five Thousand only) as compensation. Against which, the appellant has preferred this appeal.

3.A brief substance of the claim petition in M.C.O.P.No.261 of



2004 is as follows:

On 22.08.2004, at about 08.00 a.m., when the claimant was travelling along the Othanchathiram - Radhapuram main road, near Sivaselvi Hospital, on the left edge of the road, the two wheeler bearing registration No.TN-63-X-4471 was driven by its driver in a rash and negligent manner dashed against the claimant. The claimant sustained injuries and took treatment in a private hospital in Othanchathiram and then he took treatment in Coimbatore Ganga hospital and he was permanently disabled. A case in Crime No.704 of 2004 was registered against the rider of the two wheeler. He claimed a sum of Rs.2,00,000/- (Rupees two Lakhs only) as compensation.

4.The brief substance of the counter filed by the second respondent/appellant is as follows:

The place of occurrence and mode of occurrence are wrongly stated in the petition. There is no permanent disability for the claimant. The vehicle stated by the claimant was not involved in the occurrence. The vehicle bearing Registration No.TN-57-X-834 was the vehicle involved in the accident and that the vehicle was driven by one Jothi and not by Elamathi. The rider of the two wheeler that caused the accident, was not having valid driving licence. With a motive to claim compensation with the help of the police, a false case was registered against the first respondent/second respondent and hence, the second respondent/appellant is not liable to pay the compensation.

5.After trial, the Tribunal has awarded a sum of Rs.85,000/- (Rupees Eighty Five Thousand only) as compensation to be paid by the appellant. Against which, the appellant has preferred this Civil Miscellaneous Appeal.

6.On the side of the appellant, it is stated that the driver of the vehicle was not having any valid driving licence. The insured vehicle was not at all involved in the accident.

7.On the side of the appellant, it is stated that a case was registered before CBCID police and the FIR was marked as Ex.R8 and the copy of the chargesheet was marked as Ex.R9.

8.The learned counsel for the appellant would rely upon the judgment passed by the Hon'ble Supreme Court in the case of **Nirmala Kothari v. United India Insurance Co. Ltd.**, reported in **2004 (3) SCC 297**, wherein it is stated as follows:

"While the insurer can certainly take the defence that the licence of the driver of the car at the time of accident was invalid/fake however the onus of proving that the insured did not take adequate care and caution to verify the genuineness of the licence



or was guilty of willful breach of the conditions of the insurance policy or the contract of insurance lies on the insurer."

9.The learned counsel for the appellant would rely upon the judgment passed by the Hon'ble Supreme Court in the case of **Malla Prakas Rao v. Malla Janaki and Ors.** Reported in **2004 (3) Scc 343**, wherein it is stated as follows:

"Deceased himself was negligent therefore Tribunal declined to grant any compensation to claimants - Aggrieved by order appellants preferred appeal, high Court found that there was contributory negligence and therefore appellants were entitled to a compensation.....Since liability of Insurance company was 40 per cent of enhanced amount - respondent company should pay balance amount along with interest at rate of 7 per cent on enhanced amount."

10.In support of his contention, the judgment passed by the Hon'ble Supreme Court in the case of **Beli Ram v. Rajinder Kumar and another** reported in **2020 (2) TNMAC 445 (SC)** is cited.

11.On the side of the first respondent, it is stated that the respondents have not examined any witness to prove that the claim was a bogus one. Pendency of the criminal case against the first respondent/second respondent will not curtail the rights of the claimant. The claimant cannot be put into hardship. It is the duty of the respondents to prove that the claim was a bogus one. The FIR, Ex.P1 and chargesheet, Ex.P3 were filed only against the first respondent/second respondent. The criminal Court held the first respondent/second respondent guilty of the accident in the judgment, Ex.P6. The vehicle involved in the accident as per Ex.P5, M.V. Report was insured with the appellant and prayed the appeal to be dismissed.

12.It is seen that R.W.2, Enquiry Officer was appointed by the appellant. R.W.1 is also an employee of the appellant. Both R.W.1 and R.W.2 are not eye witnesses. So far the first respondent was not found guilty by a competent Court in the case filed by the CBCID Police. Whether the investigation done by the police in Crime No.704 of 2004 is correct or whether the chargesheet by the CBCID police is correct cannot be decided in the claim petition.

13.The first respondent has admitted the offence before the Judicial Magistrate Court and he has paid the fine. On the basis of the FIR, Ex.P1, chargesheet, Ex.P3, rough sketch, Ex.P4, M.V.Report, Ex.P5, and on the evidence of P.W.1, the Tribunal has come to the conclusion that the accident was due to rash and negligent driving of the first respondent/second respondent.



14.It is admitted that the vehicle mentioned in the petition was insured with the appellant and the insurance policy was marked as Ex.R1. In the above circumstances, it is decided that if needed the Insurance company can proceed against the first respondent/second respondent, after the completion of the case filed by the CBCID Police. If at all the case filed by the CBCID against the first respondent/second respondent ended in conviction, liberty is given to the appellant to recover the compensation amount from the first respondent.

15.Except the question of liability, no other points was raised by the appellant regarding quantum. Hence, it is decided that the quantum fixed by the Tribunal is correct.

16.In the result, this Civil Miscellenaous Appeal is dismissed. The 1st respondent is entitled to a sum of Rs.85,000/- (Rupees Eighty Five Thousand only) as compensation with interest at the rate of 7.5% from the date of the claim petition till the date of realization.

17.The appellant is directed to deposit Rs.85,000/- (Rupees Eighty Five Thousand only) with 7.5% interest from date of the claim petition till the date of realization and the amount if not deposited earlier, has to be deposited within a period of 8 weeks from the date of receipt of copy of this order. On such deposit, the claimant is permitted to withdraw the award amount with proportionate interest after deducting any amount received by him earlier without filing any formal petition before the Tribunal. Excess amount, if any deposited shall be refunded to the appellant. The claimant is not entitled for interest for the default period, if there is any. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-I)

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/ /2021

Sub Assistant Registrar(CS)

MRN

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, Sub Judge,
Palani.

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

C.M.A. (MD) No.708 of 2013
23.06.2021

SR (CO)

LR (26.07.2021) 5P 4C