

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reservation	17.02.2021
Date of Judgment	13.05.2021

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THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI

C.M.A(MD)No.593 of 2016andCMP(MD)No.6768 of 2016

The National Insurance Company Limited,
through its Branch Manager,
Having Office at I Floor,
No.6, West Masi Street,
Madurai-625 001.

... Appellant/2nd Respondent

Vs.

1.Thenmozhi
2.K.Preethi
3.Minor K.Shobika
(Minor R3 represented by her
mother and Natural Guardian
Thenmozhi, the 1st respondent)

... R1 to R3/Petitioners 1 to 3

4.M/s.Nathan Traders,
7-A, Maninagaram Main Road,
Madurai.

... R4/1st Respondent

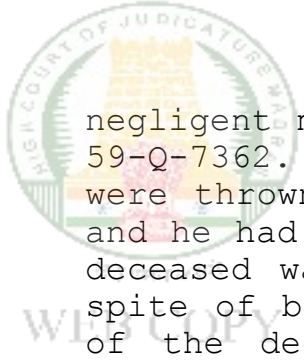
PRAYER:- Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988, against the award of the Motor Accident Claims Tribunal (III Additional District and Sessions Judge (PCR), Madurai, made in MCOP No.736 of 2003, dated 18.04.2013.

For Appellant	: Mr.D.Sivaraman
For R1 & R3	: Mr.G.Aravinthan
For 2 nd & 4 th Respondents	: No appearance

J U D G M E N T

This Civil Miscellaneous Appeal is directed against the award of the Motor Accident Claims Tribunal (III Additional District and Sessions Judge (PCR), Madurai, made in MCOP No.736 of 2003, dated 18.04.2013.

2.The short facts of the case is that on 09.12.2002 at about 2.00 pm, near American College, Alagar Kovil Road at Madurai, when the deceased V.Kannan along with his co-brother travelled as a pillion rider in the two wheeler TN-59-Q-7362, at that time, the driver of the Hero Honda TN-59-P-1393 drove it in a rash and



negligent manner and dashed on the backside of the two wheeler TN-59-Q-7362. In that process, both the deceased V.Kannan and Selvan were thrown out of the vehicle and the deceased sustained injuries and he had also severe injury on his right leg and immediately, the deceased was taken to Senthil Nursing Home for treatment, but in spite of better treatment, he died, on 16.02.2002. The legal heirs of the deceased filed a claim petition seeking compensation of Rs.20,00,000/- for the death of the deceased V.Kannan.

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 driver of the offending vehicle caused the accident and awarded compensation of Rs.11,58,000/- to the claimants. Challenging the award, the appellant Insurance Company is before this court.

5.This court heard the rival submissions made on either side and perused the materials available on record.

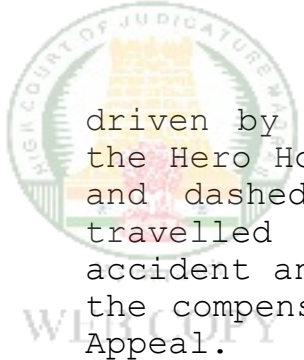
6.The main contention raised on the side of the appellant/2nd respondent is that the offending vehicle was not involved in this case and the offending vehicle was falsely implicated for claiming compensation and the evidence of PW2 does not inspire any confidence over his testimony with regard to the alleged accident and there was a delay in giving the complaint to the police in respect of the accident and PW2 claimed to be the relative of the deceased, but failed to give the complaint in respect of the accident, which creates doubt over his testimony and the alleged vehicle TN-59-P-1393 was not involved in the accident and PW2 came to know the registration of the alleged vehicle from the police and there was no explanation, how the police traced the offending vehicle and in the absence of examination of the Investigation Officer, it presumes that the bike bearing Registration No.TN-59-P-1393 was not involved in the accident and hence, the appellant Insurance Company/2nd respondent is not liable to pay the compensation to the claimants. For that, the learned counsel appearing for the appellant/2nd respondent submitted the following rulings:-

(1).2011(2)TN MAC 78 (DB) (New India Assurance Company Limited Vs. K.Rameshkumar);

(2).2013(1)TN MAC 481 (SC) (Reshma Kumari Vs. Madan Mohan);

(3).Unreported judgment of this Court, dated 05.06.2017 made in CMA No.1867 of 2002 (The Branch Manager, National Insurance Company Limited, Pudukkottai Vs. Krishnan and 6 others).

7.On the other hand, the learned counsel appearing for the respondents 1 to 3/claimants submitted that on 09.12.2002 at 2.00 pm, when the deceased V.Kannan was travelling in a two wheeler bearing Registration No.TN-59-Q-7362 as pillion rider, which was



driven by his Brother-in-Law near Alagar Kovil Road, the rider of the Hero Honda TN-59-P-1393 drove it, in a rash and negligent manner and dashed against the two wheeler, in which the deceased was travelled and only the two wheeler TN-59-P-1393 involved in the accident and hence, the appellant Insurance Company is liable to pay the compensation and prays for dismissal of the Civil Miscellaneous Appeal.

8. The main contention of the appellant Insurance Company/2nd respondent is that the two wheeler bearing Registration No. TN-59-P-1393 was not involved in the alleged accident. Hence, it is the duty of the claimants to prove that only the two wheeler TN-59-P-1393 was involved in the accident and there was a delay in giving the complaint to the police and in this case, the eye witness has not stated the registration number of the offending vehicle and hence, it creates doubt about the involvement of the offending vehicle TN-59-P-1393.

9. But on the other hand, the learned counsel appearing for the respondents 1 to 3/claimants submitted that the wife of the deceased was with her husband in the hospital, after the death of her husband and PW2 gave the complaint to the police in respect of the accident and PW2 came to know the registration number of the two wheeler TN-59-P-1393 from the police and hence, the delay in giving the complaint to the police, which will not affect this case. For that, the learned counsel appearing for the respondents 1 to 3/complaints submitted a ruling reported in **(2011)4 SCC 693 (Ravi Vs. Badrinarayan and others)**. In that case, it has been held in para 15 to 18 as follows:-

"15. Under the aforesaid facts and circumstances, it is amply proved that the aforesaid truck was involved in the road accident, which had caused injuries to Ravi. No doubt, it is true that there has been delay in lodging the FIR but the same has already been explained by Suresh. The explanation offered by him is not only satisfactory; it inspires confidence as cogent and valid therein. Not only this, a consistent stand has been taken by Suresh right from the beginning till the lodging of the F.I.R. The reasons for delay are as under :-

(i) Ravi was seriously injured, thus it was more important for Suresh to get him treated first.

(ii) Police had arrived at the hospital, where injury report was prepared in which it was mentioned that injuries were caused on account of road accident at 9.00 a.m. on 7.10.2001.

(iii) The categorical admission made by Prahlad Singh, owner of the truck, that vehicle in question was involved in the accident on 7.10.2001,



when the same was being driven by Badrinarayan and this information was conveyed to him on phone the very same day.

(iv) FIR could not be lodged immediately as other persons in the locality pressurised Suresh that it could be sorted out amicably since Badrinarayan, the driver of the vehicle, was his neighbour.

(v) Suresh was not aware of the niceties of law that lodging of FIR was condition precedent before filing the Claim Petition.

All these facts find place in the formal FIR which was registered on 26.01.2002 at the instance of Suresh.

16.The cumulative effect of the aforesaid events clearly established that accident had taken place on 7.10.2001 at about 8.30 in the morning on account of rash and negligent reversing of the truck by driver Badrinarayan, owned by Respondent No. 2, Prahlad Singh. Under these circumstances, it cannot be said that delay in lodging the FIR could have proved fatal to the claim case filed by Ravi. Narration of the aforesaid events would show the bona fides of Suresh. As mentioned hereinabove, a consistent stand has been taken right from the beginning till the lodging of the FIR. The chronological events narrated hereinabove inspire confidence and it does not smack of a concocted case which has been filed against the driver and the owner of the vehicle only with an intention to get compensation.

17.It is well-settled that delay in lodging FIR cannot be a ground to doubt the claimant's case. Knowing the Indian conditions as they are, we cannot expect a common man to first rush to the Police Station immediately after an accident. Human nature and family responsibilities occupy the mind of kith and kin to such an extent that they give more importance to get the victim treated rather than to rush to the Police Station. Under such circumstances, they are not expected to act mechanically with promptitude in lodging the FIR with the Police. Delay in lodging the FIR thus, cannot be the ground to deny justice to the victim.



(ii)2004 (2) TN MAC 101 [C.M.A.No.614 of 1995 N.Sathidevi & others V. V.Giridharan & another and C.M.A.No.25 of 1997 M/s.New India Assurance Company Limited, No.66, West Bouliward Road, Trichy V. N.Sathidevi & others] wherein this Court relying upon the decision of the Division Bench of this Court reported in 1995 2 MLJ 317 [The Managing Director, Thanthai Periyar Transport Corporation Limited, Villupuram V. Mohammed Jaffer] held that in the case of confession made by the driver before the Criminal Court and when no evidence was let in to conclude that the vehicle was involved in the accident and the claimants not establishing independently before the Tribunal that the said vehicle was involved in the accident, the Tribunal is not correct in holding that the accident took place due to the rash and negligence of the driver of the vehicle."

12.On the other hand, the learned counsel appearing for the respondents 1 to 3/claimants argued that already, the driver of the offending vehicle admitted his guilt before the Magistrate Court and further, PW2 eye witness categorically stated that one Hero Honda vehicle dashed behind his vehicle, in which the deceased travelled and hence, it was proved on the side of the respondents 1 to 3/claimants that the two wheeler bearing Registration No.TN-59-P-1393 was involved in the accident and hence, the appellant Insurance Company is liable to pay the compensation.

13.In this case, in order to prove that the two wheeler TN-59-P-1393 was not involved in the accident, on the side of the appellant Insurance Company/2nd respondent, the Investigation Official appointed by the Insurance Company and the official of the Insurance Company were examined as RW1 and RW2. RW1 and RW2 categorically stated that the two wheeler TN-59-P-1393 was not involved in the accident and the above vehicle belonged to the relative of PW1 and hence, so as to help the claimants to claim compensation, the vehicle was falsely implicated in this case, hence, the Insurance Company is not liable to pay the compensation.

14.The alleged accident took place on 09.12.2002. But RW1 conducted the investigation only during the year 2005. Before that, the rider of the two wheeler admitted his guilt before the Magistrate Court. Even though, the admission of an accused before the Magistrate Court will not bind the motor accident case, but in this case, on the side of the claimants, they proved the involvement of the two wheeler TN-59-P-1393 in the accident by way of examining the eye witness, who in-turn categorically stated that one known vehicle dashed his vehicle. But however, he came to know the registration of the offending vehicle from the police. There is denial on the side of the appellant Insurance Company that TN-59-P-1393 is a Hero Honda two wheeler. At the time of accident, the persons, who were in the place of occurrence immediately took steps



to save the life of the injured. But PW2 stated that the type of the vehicle, which dashed against his vehicle. In this case, the driver of the offending vehicle was not examined on the appellant Insurance Company to prove that the two wheeler TN-59-P-1393 was not involved in the alleged accident. Further, no documents were filed on the side of the appellant Insurance Company to prove that steps were taken for the false implication of the offending vehicle in the occurrence. Hence, on careful perusal of the evidence of PW2, it reveals that only the two wheeler TN-59-P-1393 was only involved in the accident and only due to the rash and negligent driving on the part of the offending vehicle driver, the accident took place. This court is of the considered view that the tribunal, considering all these aspects, has correctly given a finding and also awarded compensation to the claimants, which requires no interference of this court.

15. In fine, this Civil Miscellaneous Appeal fails and the same is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CO)

// True Copy //

/ /2021

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,

The Motor Accident Claims Tribunal/
III Additional District and Sessions Judge (PCR),
Madurai.

Copy to

The Section Officer,
VR Section,
Madurai Bench of Madras High Court, Madurai. (2C)

+1 CC to M/s.D.SIVARAMAN, Advocate (SR-18529[F] dated 13/05/2021)

C.M.A(MD) No.593 of 2016

13.05.2021