



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reservation	11.01.2021
Date of Judgment	19.02.2021

WEB COPY

CORAM:

THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI

C.M.A(MD)No.829 of 2015

and

MP(MD)No.2 of 2015

National Insurance Company Limited,
Branch Office No.2,
Jerome Building, 1st Floor,
Fort Station Road,
Trichirappalli-2

: Appellant/2nd Respondent

Vs.

1.Velusamy
2.Raja

: 1st Respondent/Petitioner
: 2nd Respondent/1st Respondent

PRAYER: Civil Miscellaneous Appeal has been filed under Section 173 of Motor Vehicles Act, 1988 against the award and decree, dated 28.04.2014 made in MCOP No.3548 of 2013 on the file of Motor Accident Claims Tribunal (Special Sub Court), Trichirappalli.

For Appellant : Mr.J.S.Murali

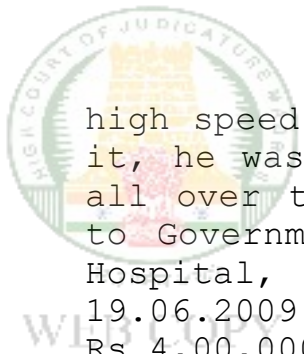
For 1st Respondent : Mr.V.G.Kamalesh

For 2nd Respondent : No appearance

JUDGMENT

Challenge made in this appeal is to the the award, dated 28.04.2014 made in MCOP No.3548 of 2013 on the file of Motor Accident Claims Tribunal (Special Subordinate Court), Trichirappalli.

2.The brief facts of the case are that on 18.06.2009 at about 8.15 pm, when the claimant was riding motor cycle (Bajaj Pulsar) TN48-F-1672 on the Kumbakonathan Road at T.V.Kovil near Markkammudaiyan Koil from west to east direction, the TVS Star City TN-48-F-5451 came in a rash and negligent manner with very



high speed and dashed behind the claimant's motor cycle and due to it, he was thrown out and sustained fracture and grievous injuries all over the body. Immediately, after the accident, he was taken to Government Hospital, Trichy and then, he was referred to KMC Hospital, Trichy, where he took treatment as inpatient between 19.06.2009 and 21.06.2009. The claimant sought compensation of Rs.4,00,000/- on the ground that the driver of the offending vehicle was responsible for the accident.

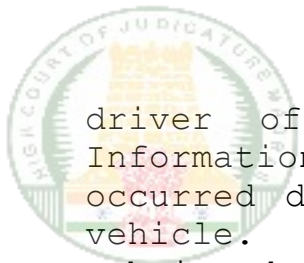
3.The Tribunal, upon consideration of oral and documentary evidence, came to the conclusion that the driver of the offending vehicle was responsible for the accident and awarded compensation of Rs.1,33,200/- together with interest @ 7.5% p.a to the claimant. Challenging the award of the tribunal, the Appellant Insurance Company as appellant is before this court.

4.Heard both sides and perused the materials available on record.

5.The learned counsel appearing for the appellant/2nd respondent argued that at the time of accident, the claimant was under influence of alcohol and when he was riding in the motor cycle, a dog crossed the road and in order to avoid hitting the dog, he applied sudden break, as a result of which the motorcycle capsized and the claimant sustained grievous injuries and no third party vehicle is involved in the accident and further, the earlier medical records of the hospital also reveals that at the time of accident, the claimant had breath of alcohol smell and further, the criminal case was closed as "Mistake of Fact" and after investigation, it was brought that the claimant fell down from the vehicle on his own and no third party vehicle was involved and hence, the Insurance Company is not liable to pay compensation and prays that the civil miscellaneous appeal has to be allowed.

6.On the side of the 1st respondent/claimant, it is argued that only due to the rash and negligent driving of the offending vehicle, the accident occurred and the claimant was not in drunken mood at the time of accident and there was no negligence on the part of the claimant and no document was filed on the side of the appellant/2nd respondent to show that on the basis of the final report, the criminal case was closed as "Mistake of Fact" and no opportunity was given to the claimant to contest the above final report and hence, it will not bind on him and hence, the offending vehicle had insurance coverage and hence, the Insurance Company is liable to pay the compensation.

7.The claimant was examined as PW1. PW1 deposed that the accident occurred due to the rash and negligent driving of the



driver of the offending vehicle. On perusal of the First Information Report (Ex.P1), it is stated that the accident occurred due to the rash and negligent driving of the offending vehicle. But on the side of the appellant/2nd respondent, it is submitted that on the basis of the final report, the criminal case was closed as "Mistake of Fact" and hence, there is no occurrence as alleged by the claimant and hence, the Insurance Company is not liable to pay the compensation. It is to be noted that filing of final report by the Investigating Officer will not amount to prove that the case was closed as "Mistake of Fact." Further, the driver of the offending vehicle has not sent any complaint to the superior police officials opposing the registration of the criminal case against him. Without proving that the final report submitted by the Investigating Officer was accepted by the criminal court, it cannot be accepted that the offending vehicle was not involved in the accident. Further, it was stated on the side of the appellant/2nd respondent that at the time of accident, the claimant was in drunken mood. To prove it, the injured was not subject to Blood or Urine test. No offence for driving the vehicle in drunk mood was filed as against the claimant. To prove that the final report was accepted and on the basis of the above final report, the criminal case was closed, no document was filed on the side of the appellant/2nd respondent. The claimant stated that he was not given reason opportunity to contest the final report. Hence, it is the duty of the appellant/2nd respondent to prove that only due to the claimant himself fell down and sustained injury. But there was no contra evidence let in on the side of the appellant/2nd respondent to prove that due to the negligence on the part of the injured, the accident occurred. In this case, the appellant/2nd respondent filed only the copy of the final report and no other documents were filed on the side of the appellant/2nd respondent. Hence, it was not proved that the claimant was in drunken mood at the time of accident. Hence, the argument put forth on the side of the appellant/2nd respondent stating that the offending vehicle was not involved in the accident and the claimant drove his vehicle in a drunken mood, one dog crossed and in order to avoid the dashing against the dog the injured fell down and sustained injury and hence, the final report was filed before the criminal court stating that the case was closed as "Mistake of Fact" is not at all acceptable.

8. On perusal of the evidence, it shows that there was negligence on the part of the claimant also. Hence, the negligence is fixed at 70% on the part of the driver of the offending vehicle and 30% on the part of the injured.

9. It is to be noted that the learned counsel appearing for the appellant Insurance Company has not disputed the quantum award by the tribunal and he has challenged this appeal on the basis of the



negligence. Hence, this court, while confirming the award passed by the tribunal, fixed the negligence at the ratio of 70% on the side of the offending vehicle driver and 30% on the part of the injured.

10. In the result, this Civil Miscellaneous Appeal is partly allowed. The award of the tribunal is confirmed. The negligence is fixed at 70% on the part of the Offending vehicle Driver and 30% on the part of injured. The appellant Insurance Company is directed to deposit their apportionment of negligence amount as fixed by this court before the tribunal together with interest at the rate of 7.5% p.a. from the date of petition, till the date of deposit. On such deposit, the claimant is entitled to withdraw the entire amount without filing any formal petition before the tribunal. The excess amount if any, shall be refunded to the appellant Insurance Company. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (AD II)

// True Copy //

/ /2021

Sub Assistant Registrar (CS)

ER
To

1. The Special Subordinate Judge,
Motor Accident Claims Tribunal,
Trichirappalli.

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

+1 CC to Mr.J.S.MURALI, Advocate (SR-6380[F] dated 22/02/2021)

C.M.A(MD)No.829 of 2015
19.02.2021

KM (09.03.2021) 4P 5C