



C.M.A.No.2520 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.07.2022

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.M.A.No.2520 of 2016

and

C.M.P.No.17855 of 2016

The New India Assurance Company Ltd
Neela South Street
Nagapattinam Town.

... 2nd Respondent / Appellant

Vs

1.M.Mohamed Yonus

... claimant / 1st Respondent

2.Chinnaiyan

... 1st Respondent / 2nd Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1989 (Act IV of 1939) praying to set aside the judgment and decree dated 26.12.2013 made in M.C.O.P.No.254 of 2010 on the file of the Motor Accident Claims Tribunal, Nagapattinam.

For Appellant : Mr.R.Neethe Perumal



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For Respondent-1: Mr.S.Giritharan

For Respondent-2: Served-No Appearance

JUDGEMENT

The case on hand once again demonstrates how the beneficial legislation is sought to be manipulated by unscrupulous claimants.

2. The brief facts which give rise to the appeal by the appellant-Insurance Company are as follows:-

(i) The first respondent herein/claimant had filed M.C.O.P.No.254 of 2010 on the file of the Motor Accident Claims Tribunal, Namakkal, claiming compensation of a sum of Rs.6,00,000/- for the injuries sustained by him in an alleged accident on 01.03.2004 at about 9.30 a.m. It is his case that on the said date, he was travelling pillion in a Yamaha motor-cycle bearing Registration No.PY 02A 8805 belonging to the first respondent, which was ridden by the first respondent's friend, Selvaraj. They were cruising on Nagore-Nagapattinam main road and the rider was driving the same in a rash and negligent manner. While so, suddenly when the rider

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noticed a vehicle coming from the opposite direction, he applied the brake, as a result of which, the motor-cycle has capsized and the claimant was thrown away from the motor-cycle and has sustained injuries. The accident was solely on account of the rash and negligent driving of the rider of the first respondent's vehicle and the first respondent, being the owner of the vehicle and the appellant-Insurance Company, being the insurer of the vehicle were liable to compensate the claimant.

3. The owner of the vehicle in which the claimant had travelled, had filed a counter *inter-alia* contending that the motor-cycle did not belong to him. It is his contention that the vehicle mentioned by the claimant was sold by him to one Selvaraj on 10.12.2003 much before the accident. Therefore, he would contend that he is not a necessary party.

4. Consequently, the appellant-Insurance Company would file a counter stating that the vehicle was not insured with them and that the first respondent had not produced the F.I.R or Motor Vehicle Inspection report,



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which would show that an accident as pleaded has taken place. They would submit that the vehicle belonging to the first respondent was not at all involved in the accident and the accident was only on account of rash and negligent driving of the said Selvaraj. Since the first respondent's vehicle was not involved in the accident and as the claimant did not meet with any accident involving the first respondent's vehicle, the second respondent was not liable for the claim. Therefore, they sought for dismissal of the claim petition.

5. The Tribunal below however proceeded to hold that the accident had occurred only on account of the rash and negligent driving of the rider of the first respondent's motor-cycle. The Tribunal has brushed under the carpet the non-production of F.I.R and Motor Vehicle's report by the claimant. The Tribunal would rely upon Ex.P1-Accident Register to come to a conclusion that the accident as pleaded by the first respondent had taken place. He would also rely upon the evidence of P.W3, who had been examined as eye witness. Thereafter, the Tribunal has awarded a sum of



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Rs.1,66,500/-. Challenging the order, the appellant-Insurance Company has filed the appeal.

6. The main argument put forward by Mr.R.Neethe Perumal, learned counsel appearing for the appellant-insurance company is that though the first respondent herein would contend that the injuries sustained by him was on account of a road accident. Neither an F.I.R. nor the motor vehicle Inspection Report was produced by the first respondent. The Tribunal has not considered this argument and a perusal of the order would indicate that the Tribunal below was keen to award compensation. Even an issue as to whether an accident had taken place has not been framed by the Tribunal below. He would submit that a copy of the complaint dated 22.03.2004 alleged to have been sent by the claimant to the Sub Inspector of Police, Nagoor Police Station, Nagoor, has been filed without any proof of delivery to the addressee.

7. Per contra, Mr.S.Giritharan, learned counsel appearing on



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behalf of the first respondent/claimant would submit that the F.I.R. could not be lodged, since the first respondent was admitted in the hospital and was an inpatient for over 20 days. He would submit that the first document, namely the Accident Register, clearly describes the injury as one sustained in a road accident. He would contend that there was no necessity for tampering of the said evidence. He would submit that immediately as soon as he had recovered, a complaint has been sent by the first respondent/claimant. Therefore, he would submit that there is no necessity to set aside or vary the order of the Tribunal below.

8. Heard the learned counsel on either side and perused the materials available on record.

9. The case of the first respondent is that on 01.03.2004, he was riding pillion with one Selva Raj. On seeing a vehicle coming from the opposite direction, the said Selvaraj had suddenly applied the brakes which resulted in the first respondent being thrown of from the vehicle as a result



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of which he had sustained injuries. Although P1-Accident Register would show that the report has been sent to the Police Department, there is no F.I.R produced on the side of the first respondent. The driver of the motor-cycle, namely Selvaraj has not appeared before this Court to corroborate the case of the first respondent/claimant. 20 days after the accident, a complaint is said to have been despatched to the Sub Inspector of Police, Nagoor Police, Nagoor on 22.03.2004. There is no proof that this letter has reached the addressee. The letter has been sent only by ordinary post. Though after his recovery, the claimant could have filed a delayed F.I.R, this has not been done. Therefore, the contention of the appellant-Insurance Company that the claim is a fake one, appears to be correct. The reasons for arriving at this conclusion are as follows:-

a) In the complaint letter-Ex.P2 dated 22.03.2004, the first respondent would state that the brake had been applied, since the goats, which were grazing, had suddenly crossed the road, However, in the claim petition, he would state that brake was applied when



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the rider of the bike had suddenly noticed a vehicle coming from the opposite direction.

b) No F.I.R has been filed and even Ex.P2 has not been treated as an F.I.R, since there is no proof to show that the letter has reached the addressee.

c) The rider of the bike Selvaraj has not been examined and there is no explanation given for the same. On the contrary some third persons have been examined as the eye witnesses.

10. Therefore, in the above circumstances, the very occurrence of the accident as pleaded has not been proved and in these circumstances, the first respondent is not entitled to any compensation and consequently, the order passed by the Tribunal is set aside. Accordingly, the civil miscellaneous petition is allowed. C.M.P. is closed.

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Index : Yes/No
Speaking order/non-speaking order
srn

To

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- 1.The Motor Accident Claims Tribunal Judge
& Chief Judicial Magistrate
Nagapattinam.
- 2.The Section Officer
V.R.Section, High Court, Madras



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P.T.ASHA, J.,

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