



C.M.A.No.324 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.07.2022

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THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.M.A.No.324 of 2018

Elangovan

... Appellant/Petitioner

Vs

1.B.Thaniasu

2.The Oriental Insurance Company Limited,
No.1, Katpadi Road, Vellore,
Vellore District Branch at Karaikudi – 1.

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and judgment in M.C.O.P.No.969 of 2013, dated 26.06.2013 on the file of MACT/Special Subordinate Judge, Tirupattur, Vellore District.

For Appellant : Mr.Pa.Sudesh Kumar

For R1 : Served – No appearance

For R2 : Mr.K.Vinod



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JUDGEMENT

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The claimant is before this Court challenging the dismissal of his claim petition by the MACT/Special Subordinate Judge, Tirupattur, Vellore District.

2.The facts in brief necessary for appreciating the issue on hand is herein below quoted :-

(i) The appellant had filed M.C.O.P.No.969 of 2013 on the file of the MACT/Special Subordinate Judge, Tirupattur, Vellore District, seeking compensation of a sum of Rs.15,00,000/- for the injuries sustained by him in a road accident.

(ii) The appellant would submit that he is self-employed and earning a sum of Rs.15,000/- per month. He would submit that on 14.07.2005 at about 09.00 p.m., he had sustained injuries in an accident near Marapattu Village in between Tirupattur, Vellore main road. He would submit that on account of the accident, he had become unconscious and later he came to know that a TATA Sumo vehicle bearing Registration No.TN-63-V-0517 belonging to the first respondent and insured with the second respondent had dashed the two wheeler, which was driven by him with one Rajamanickam riding pillion. The



petitioner/appellant was taken to CMC Hospital, Vellore immediately after the accident. The appellant would submit that on account of the injuries he was unconscious for several days and even now, he is undergoing treatment.

(iii) The owner of the TATA Sumo, who is the first respondent has not appeared before the Court and therefore, was set *ex-parte*. The second respondent/Insurance Company had originally filed a counter, in which they had contended that the petitioner/appellant was himself responsible for the accident.

(iv) The second respondent/Insurance Company further contended that the details of the policy and the driving license of the driver of the TATA Sumo has not been produced so as to enable them to verify the accident as well as the policy. They had questioned the age, income and the occupation of the petitioner/appellant and had sought for dismissal of the above claim petition.

(v) An additional counter was filed on 21.11.2009, wherein the second respondent/Insurance Company had stated that the first respondent's vehicle was not involved in the accident and it has been later introduced by the petitioner/appellant for claiming compensation.



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3.The learned counsel for the second respondent/Insurance Company would submit that on 14.07.2005 at 03.00 p.m. the petitioner was riding the motorcycle on the highway and he had fallen into a pit and sustained injuries. Thereafter, he has got himself admitted in the CMC Hospital on 15.07.2005 by noon. At the time of admission, he had reported minor injury because of the road accident to the duty doctor, who had immediately recorded the same.

4.It is seen that at the earliest point of time, the appellant has not mentioned the involvement of the TATA Sumo car. The FIR has also been lodged after over a period of 40 days, despite the fact that the pillion rider admittedly had not sustained any serious injuries and who is claimed to have taken the petitioner/appellant to the hospital.

5.The learned counsel would therefore submit submit that entire case was a false claim. He further contended that the FIR is lodged 40 days after the accident and the criminal case against the driver was also disposed of on the very same day, the FIR is lodged, this itself would move the collusion. The Tribunal below after considering the evidence on record came to the conclusion



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that the first respondent's vehicle was not involved in the accident and dismissed the claim petition. Challenging the same, the appellant is before this Court.

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

7.Admittedly, as soon as the accident had taken place, the appellant has been taken to the CMC Hospital by the pillion rider. This is clear from a perusal of Ex.R1, the intimation about the accident given by the hospital to the Sub Inspector of Police, North Police Station, Vellore. In this document, it is clearly described that the appellant was brought to the hospital by Rajamanickam, residing at Door No.130, Raja Sethupathy, Madurai.

8.A perusal of Ex.P-10 and Ex.P-11 would indicate that the hospital has intimated that the appellant was involved in a road accident while riding a two wheeler and he had fallen into a pit. The same statement is reiterated in Ex.P-32 and Ex.P-33. It is only in the FIR, which has been filed 40 days later that the



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TATA Sumo has been introduced. The Tribunal in very great detail has discussed this while dealing with the first point for consideration. The learned Judge has relied upon the evidence of the appellant as P.W.1 and the witness, Rajamanickam as P.W.2. The Tribunal below has elaborately dealt with the failure on the part of Rajamanickam to mention about the alleged offending vehicle, namely TATA Sumo car. The Tribunal has also discussed the haste in which the FIR Ex.P-1 has been lodged, charge sheet Ex.P-2 prepared and the arrest of the persons, all of which has taken place on a single day. He would submit that all this would go to show that the accident has not taken place.

9. Therefore, I am inclined to confirm the said findings of the Tribunal and accordingly, the Civil Miscellaneous Appeal is dismissed. No costs.

12.07.2022

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

To

1. The MACT/Special Subordinate Judge, Tirupattur, Vellore District.
2. The Section Officer, V.R. Section, High Court, Madras.

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P.T.ASHA, J.,

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