

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.04.2022

CORAM:

THE HONOURABLE MS.JUSTICE P.T.ASHA

C.M.A.NO.3909 OF 2019

AND

C.M.P.NO.22298 OF 2019

M/s.Bharti AXA General Insurance Co. Ltd.,
First Floor, Divya Trade Centre,
No.II, Brindavan Road, Fairlands,
Salem-636 016.

...Appellant / 2nd Respondent

Vs.

1.Periyasamy ...1st Respondent / Petitioner

2.Thangavelu ...2nd Respondent / 1st Respondent

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Award and Decree dated 31.01.2017 in M.C.O.P.No.1462 of 2014 on the file of the Motor Accident Claims Tribunal, Special Sub-Court No.2, Salem.

For Appellant : Mr.S.Arun Kumar

For Respondents : Mr.S.P.Yuvaraj [R1]
R2 - (Served) No Appearance

JUDGMENT

The Insurance Company aggrieved by the award passed by the Motor Accident Claims Tribunal, Special Sub-Court No.2, Salem in M.C.O.P.No.1462 of 2014 is the appellant before this Court.

2. The appellant's grievance is that they have been made liable to pay compensation for the accident though the lorry that is insured with them is not involved in the accident. It is their contention that the claim is a fake claim.

3. The facts in brief are as follows:

The claimant/1st respondent herein has filed the above claim petition claiming compensation for a sum of Rs.11,45,000/- restricted to Rs.10,00,000/- for the accident that had occurred on 24.11.2013 at about 11.00 hours. It is the petitioner's case that on the said date, when the petitioner/claimant was riding his TVS STAR DLX from Salem to Dharmapuri National Highway, as

he came near the Pannapatti Branch Road, the 1st respondent's vehicle namely a mini Lorry bearing Reg.No.TN 30 Z 2788 came from the opposite direction, in a rash and negligent manner and in high speed. On account of the speed, the lorry dashed against the petitioner/claimant and on account of the impact, the petitioner/claimant thrown out and fell down on the road and sustained head injury, commuted fracture and multiple grievous injuries all over the body. Therefore, he was came forward with the claim petition.

4. The 2nd respondent/Insurance Company, who is the appellant herein had filed the counter denying the very accident and contending that the petitioner/claimant who was carrying a bundle of banana leaf on his motorcycle had fallen down on his own account from the motorcycle. The lorry bearing Reg.No.TN 30 Z 2788 was not at all involved in the alleged accident. With a view to grabbing a compensation, the false complaint has been lodged with the police two days after the alleged accident. The appellant would further submit that after investigation, the police has closed the case as mistake of fact. The appellant/Insurance Company had further contended that it appears that the 1st respondent and the claimant/petitioner had colluded to invent this claim. Therefore, the appellant is not liable to compensate the petitioner/claimant or indemnify the 1st respondent.

5. The Tribunal below however, choose to hold that the accident had taken place and the same had occurred on account of the rash and negligent driving of the lorry. The Tribunal had not considered the evidence of RW1 or Ex.R1 stating that the final report has not indicated who has been investigated and what was the evidence in this regard. Ultimately, the 2nd respondent / Insurance Company was directed to pay a sum of Rs.2,16,242/- to the claimant/petitioner.

6. Aggrieved by this order, the appellant/Insurance Company has filed this appeal before this Court.

7. Heard the learned counsel on either side and perused the records.

8. A perusal of the records would indicate that the 1st respondent is none other than the relative of the petitioner/claimant. The accident had occurred on 24.11.2013, but, the complaint has been lodged only two days later. The vehicle namely the lorry was not submitted for inspection to obtain the Motor Vehicle Inspector's report. That apart, the police had also closed the F.I.R., as mistake of fact. Therefore, holistically taking into consideration the above circumstances, it is distinctly clear that the accident has not

occurred in the manner in which it has been stated by the petitioner/claimant. This is the case where the accident and the injuries sustained by the petitioner/claimant was not on account of the use of the 1st respondent's lorry. The 1st respondent's lorry was in no way connected with the injuries sustained by the petitioner/claimant. This fact is further highlighted by the fact that the police had closed the First Information Report as mistake of fact. That apart, the owner of the lorry which is alleged to have caused the accident is none other than the relative of the claimant. He has not been examined as a witness. Further he has not reported the accident to the Insurance Company. In these circumstances, the order of the Tribunal below in coming to the conclusion that the 1st respondent's lorry was involved in the accident and injuries are sustained by the petitioner/claimant was on account of this accident is totally erroneous and liable to be set aside.

9. Considering the fact that this Court holds that the 1st respondent's lorry was not involved in the accident, there is no necessity to discuss on the quantum awarded by the Tribunal.

10. In the result, this Civil Miscellaneous Appeal is allowed and the Award and Decree dated 31.01.2017 passed by the Motor Accident Claims Tribunal, Special Sub-Court No.2, Salem in M.C.O.P.No.1462 of 2014 is set aside. No costs. Consequently, connected civil miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-VII)

// True Copy //

Sub Assistant Registrar

ssn

To

1.The Speical Subordinate Judge No.II,
The Motor Accident Claims Tribunal,
Special Sub-Court No.2, Salem.

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

+1cc to Mr.S.Arunkumar, Advocate Sr.No.28212

+1cc to Mr.S.P.Yuaraj, Advocate Sr.No.27265

C.M.A.No.3909 of 2019 and

C.M.P.No.22298 of 2019

BR(CO)

RVM(18/07/2022)