

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 28.04.2022

PRONOUNCED ON : 05.05.2022

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.M.A.No.2805 of 2019

and

C.M.P.No.14405 of 2019

The Oriental Insurance Co. Ltd.,
Third Party Claims Cell,
"Oriental House", 2nd Floor,
Old No.115, New No.216,
Prakasam Salai, Broadway,
Chennai - 600 108.

... Appellant/2nd Respondent

Vs.

1.Suguna

2.Manoharan

... Respondents 1 & 2/Petitioners

3.Shankar

(3rd Respondent was set ex-parte in the
lower Court. Hence, Notice is dispensed with)

...3rd Respondent/1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the award and decree dated 06.03.2019 passed in M.C.O.P.No.5416 of 2016, on the file of the Motor Accident Claims Tribunal, (Special Sub Court No.1, Motor Accidents Claims Petitions), Small Causes Court, Chennai.

For Appellant : Mr.R.Sivakumar

For Respondents: Mr.V.T.Narendiran
for R1 and R2

R3 - Served - Proof of paper
publication effected - NA

J U D G M E N T

The Insurance Company which is the second respondent before the Tribunal has filed the above Appeal challenging the Award passed by the Motor Accident Claims Tribunal, Special Sub Court

No.I, Motor Accidents Claims Petitions, Small Causes Court, Chennai in M.C.O.P.No.5416 of 2016.

2. In order to appreciate the grievance of the Appellant, it is necessary to briefly extract the facts that has given rise to the above Appeal. The claim petition in question was filed by the parents of one Naveen Kumar, aged about 22 years, who had died in a road accident on 15.11.2014. They are described as respondents 1 and 2 herein. The narration of the above accident as given in the claim petition is as follows:

On 15.11.2014 at about 16.00 hrs. when the deceased was travelling as a pillion rider in a Motor cycle bearing Regn. No.TN-01-AW-1791 at Kottamedu to Chingleput Salai, Temple Bend, E6 Thiruporur P.S. Limit, Kancheepuram District, the same was riding in a rash and negligent manner at a great high speed and without observing the traffic rules suddenly applied break, due to which the motor cycle capsized, the deceased thrown out and sustained multiple injuries, the deceased first treated in the Govt. Hospital, Chingleput, and referred to Rajiv Gandhi Govt. General Hospital, Chennai treated as inpatient in the above hospital and died on 17.11.2014. Post Mortem conducted in the Rajiv Gandhi Govt. Hospital, Chennai. The rider of the Motor cycle is alone responsible for the above accident.

3. The respondents 1 and 2 had sought compensation of a sum of Rs.50,00,000/-.

4. The first respondent herein is the owner of the motorcycle in which deceased Naveen Kumar is stated to be travelling pillion and the motorcycle is said to have been driven by one Annamalai @ Manikandan.

5. The third respondent herein remained exparte in the lower Court. The Appellant herein had filed a counter statement, in which they would contend that, as per their investigation report, the motorcycle belonging to the first respondent herein was driven by the deceased himself under the influence of alcohol. He had driven the vehicle in such a rash and negligent manner that when he applied the brake, the motorcycle had skid, as a result of which the deceased had sustained injuries and died subsequently. The Accident Register clearly proves the same as the accident is stated to be on account of a "Self Fall". The Accident Register is a document which is issued on the very same day of the accident by the Hospital Authorities. Since the accident had occurred on account of the negligence of the deceased himself, the Appellant is not liable to pay compensation, as the deceased was the tortfeasor himself. The author of the First Information Report, viz., the second

respondent herein had given the F.I.R only on 18.11.2014 and he is not an eye witness to the accident.

6. The Appellant had further submitted that the said Annamalai @ Manikandan, who is alleged to have driven the motorcycle did not possess the necessary licence to drive the same and the accident was not on account of the negligence of Annamalai @ Manikandan, since he has not driven the vehicle, but, only on account of the negligence of the deceased who drove the motorcycle. Therefore, they would contend that the Appellant cannot be called upon to compensate the claimants.

7. Before the Tribunal, the first respondent herein, mother of the deceased, was examined as P.W.1 and one, R.Panneer Selvam, who is stated to be the eye-witness to the accident was examined as P.W.2. On the side of the respondents 1 and 2, Exs.P1 to P11 were marked. The Administrative Officer of the Appellant was examined as R.W.1 and Exs.R1 to R3 were filed.

8. The Tribunal had framed the following points for consideration:

(1) Whether this accident was occurred due to the rash and negligent riding of the rider of the Motorcycle bearing Regn.No.TN-01-AW-1791?

(2) Who is liable to pay the compensation?

(3) Whether the petitioners are entitled to compensation? and if so, what is the quantum?

With reference to the first point for consideration, the Tribunal below considered Exs.P1 (FIR) and P10 (Rough Sketch) and the evidence of P.W.2 to arrive at the conclusion that the accident had occurred only on account of the rash and negligent riding by the driver of the third respondent motorcycle viz., Annamalai @ Manikandan.

9. The Tribunal while considering the statements made by the Appellant herein regarding the mention in the Accident Register that the accident was due to "Self Fall" and that the deceased was under the influence of alcohol held that the Accident Register which was marked as Ex.P2 does not contain any details, as to who had supplied the above statement, particularly, when the Accident Register would show that the deceased had been brought in a semi-conscious state.

10. Taking note of the fact that the said Annamalai @ Manikandan had not taken any steps to quash the F.I.R and the charge sheet filed against him, the Tribunal has returned the finding that the motorcycle was driven by the said Annamalai @ Manikandan and his rash and negligent driving is responsible for the accident, consequently the injuries and death of the said Naveen Kumar. Having found that the accident had occurred on

account of the rash and negligent driving by the driver of the third respondent's motorcycle, the Tribunal has held the third respondent herein liable to compensate the respondents 1 and 2 and the Appellant was directed to indemnify the same. The Tribunal has awarded a compensation of Rs.12,94,600/- to the claimants.

11. Aggrieved by this Award, particularly, since the Tribunal has rejected the substantial defence raised by them that the deceased was himself riding the motorcycle when the accident had taken place, the Appellant is before this Court.

12. Mr.R.Sivakumar, learned counsel appearing on behalf of the Appellant vehemently argued that although in the claim statement, the respondents 1 and 2 had contended that the deceased was a pillion rider, the name of the rider of the motorcycle has not been given, which clearly shows that the name of Annamalai @ Manikandan is an after-thought and made with an intent of getting compensation. He would further submit that the F.I.R itself is a manipulated one. The F.I.R is given by the father of the deceased, Manoharan. The said Manoharan is an Advocate Clerk. It is the contention of the learned counsel that it is Manoharan, who had stage managed the entire case in order to obtain compensation. He is very much aware that he will not be entitled to compensation if it is shown that his son was the rider of the motorcycle. Therefore, Annamalai @ Manikandan has been roped off. He would further submit that a perusal of the Accident Register would show that if it is true that Annamalai was the rider of the motorcycle, then it would have been Annamalai who would have brought the deceased to the Hospital. However, a perusal of the Accident Register would show that the deceased was brought in to the Hospital by one Manikandan. The learned counsel would submit that the Manikandan, whose name is reflected in the Accident Register and Annamalai are two distinct persons and the claimants are attempting to manipulate the records. He would further submit that the father, who is the author of the F.I.R has not been examined, which would have enabled the Appellant to cross examine him. Further, in the First Information Report which has been given by the second respondent herein, the deceased is described as a married man. That being the case, the respondents 1 and 2 have deliberately kept away their daughter-in-law from the claim petition, which would also go a long way to show the subterfuge being played by respondents 1 and 2 herein. He would, therefore, submit that all these factors have not been taken note of by the Tribunal below and the Tribunal has erroneously proceeded to award compensation.

13. Per contra, Mr.V.T.Narendiran, learned counsel appearing on behalf of the respondents 1 and 2 would submit that

except the Accident Register, all other documents have consistently described the driver of the motorcycle as Annamalai @ Manikandan and the deceased Naveen Kumar has been described only as the pillion rider. The learned counsel would submit that reliance cannot be placed entirely on the Accident Register to conclude that the motorcycle has been driven by the deceased himself. There is no proof to show as to who has given the details for filling up the Accident Register. He would also submit that the person who has brought the deceased to the Hospital was the very same Manikandan who is otherwise called Annamalai. This Annamalai @ Manikandan is the cousin brother of the deceased Naveen Kumar. He would also submit that the delay in filing the F.I.R is just two days and it cannot, therefore, be construed that the contents of the F.I.R are fabricated. The Accident Register which is of the same day of the accident clearly indicates that the deceased had sustained fatal injuries in a road accident. The counsel would submit that the Police after investigation has charge sheeted Annamalai @ Manikandan which would go a long way to show that it was only Annamalai @ Manikandan who is the driver of the motorcycle. He would contend that the Appellant cannot seek to paint the accident with a brush of fraud only on the basis of a single entry in the Accident Register.

14. The learned counsel appearing for the claimants would rely upon two Judgments of this Court in V.Thanikachalam Vs. C.Premalatha and another reported in 2003 AIHC 3864 and Bajaj Allianz General Insurance Co. Ltd., Vs. G.P.Chandrasekar and another reported in 2012 (1) TN MAC 548 to prop-up his arguments, that the person who has made the entry in the Accident Register has to be examined in order to prove the veracity of the same. Unless this procedure is adopted, the entry in the Accident Register cannot be looked into. In the Judgment second cited, this Court observed that the informant as per the Accident Register would have given information without knowing the exact facts. Therefore, the subsequent Police investigation and the charge sheeting should not be looked suspiciously unless it is proved that the investigation was not fair and impartial.

15. Heard the learned counsels appearing on either side and perused the materials available on record.

16. The Appellant seeks to rest their case on the entry in the Accident Register where under the column, Nature of injury and treatment, it is stated as "Self Fall", which has been entered within parenthesis. The fact that this word has been shown in parenthesis would cast a doubt on the veracity of the entry. If the information was direct, then there was no necessity for this entry to be put within parenthesis. Further,

the Accident Register is the initial document which formed the basis for the Police investigation. After their investigation, pursuant to the F.I.R, the Police have concluded that the accident has occurred on account of the rash and negligent driving of the motorcycle by its driver, the said Annamalai @ Manikandan.

17. The learned counsel for the Appellant had vehemently argued that the name Manikandan found in the Accident Register and Annamalai are two different persons and in order to make out that the motorcycle was not driven by the deceased Naveen Kumar, Annamalai has been introduced into the plot. However, a perusal of the F.I.R which is filed within two days, clearly describes Annamalai is the rider of the motorcycle. This coupled with the charge sheet after investigation would clearly show that the deceased was not the rider, but, only the pillion rider. The Accident Register does not even contain a signature or a seal. However, the same has not been disputed. As rightly pointed out by the learned counsel for the respondents 1 and 2, in the light of the charge sheet, having been laid against the said Annamalai @ Manikandan and the same having not been questioned by the said Annamalai @ Manikandan, it is not open to the Appellant to question the investigation undertaken by the Police Authorities. Further, the Accident Register has been marked on the side of respondents 1 and 2/ claimants as Ex.P2 and not by the Insurance Company. Further when the other evidence on the side of respondents 1 and 2 shows that the vehicle was driven by Annamalai @ Manikandan, the onus to prove otherwise is upon the Appellant. The Appellant has not discharged this onus.

18. In the Judgment reported in 2012 (1) TN MAC 548, which is also a case where the Accident Register of the Hospital indicated that the claimant had sustained injury while he was himself riding the motorcycle. The learned Judge has held as follows:

38. The informant as per Accident Register could have given such information without knowing the exact facts. The subsequent Complaint and the Police investigation should not always be looked suspiciously unless there are strong proof to show that the investigation was not fair and impartial. It is natural for the Insurance Company to have an 'jaunticed eye' in view of flooding bogus claims. But one should not loose sight that there may be genuine cases in which negligence fault may occur and persons in distress may do all foolish things.

39. No doubt, the Insurance Company has come forward with the case that the records have been manipulated to show the rider as a 'pillion rider' in

order to get a compensation. The witnesses for the Insurance Company viz., the Senior Legal Executive and the investigator are also on equal footing with the informant to the Hospital authorities, that they are not the eyewitnesses to the occurrence.

These observations would apply on all fours to the case on hand.

19. Therefore, I see no reason to interfere with the findings of the Court below. Since, no arguments have been advanced with reference to the quantum of compensation, I do not intend to enter into a detailed discussion about the same except to hold that a reasonable compensation has been awarded which need not be modified. In fine, the Civil Miscellaneous Appeal is dismissed. No Costs. Consequently, the connected Civil Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS-II)

//True copy//

Sub Assistant Registrar

ab

To

1. The Motor Accident Claims Tribunal,
Special Sub Court No.1,
Small Causes Court, Chennai.

Copy To

The Section Officer,
VR Section, Madras High Court,
Chennai.

+1cc to Mr.R.Sivakumar, Advocate SR.No.31061

+1cc to Mr.P.Gajendiran, Advocate SR.No.31081

C.M.A.No.2805 of 2019 and
C.M.P.No.14405 of 2019

SS(CO)
GMY(03/06/2022)