



C.M.A.(MD)No.258 of 2021

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 18.10.2022

Pronounced on : 23.12.2022

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

C.M.A.(MD)No.258 of 2021

and

C.M.P.(MD)No.5327 of 2022

The Branch Manager,
IFFCO TOKIO General Insurance Company Ltd.,
195, West, T.V.Samy Road,
R.S.Puram, Coimbatore.

...Appellant/3rd Respondent

Vs.

1. Jeyasekar

...1st Respondent/Petitioner

2. Russel Raj

3. Bencilin Nesaraj

...Respondents 2 & 3/
Respondents 1 & 2

Prayer : This Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the judgment and decree dated 07.01.2020 passed in M.C.O.P.No.93 of 2018 on the file of the Motor Accident Claims Tribunal Judge cum Chief Judicial Magistrate of Nagercoil by allowing this appeal.



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For Appellant : Mr.V.Sakthivel
For R1 : Mr.T.Selvakumaran
For R2 & R3 : No appearance

JUDGMENT

The Civil Miscellaneous Appeal is directed against the award passed in M.C.O.P.No.93 of 2018 dated 07.01.2020 on the file of the Motor Accident Claims Tribunal / Chief Judicial Magistrate, Kanyakumari at Nagercoil.

2. The appellant/Insurer, who was directed to pay compensation of Rs.4,80,000/- with interest at 7.5% per annum and costs to the first respondent/claimant for the disabilities suffered by him, consequent to an accident occurred on 12.10.2016, challenged the liability mulcted on it and also the quantum of compensation awarded at, by the Tribunal.

3. The case of the first respondent/claimant is that on 12.10.2016, when the first respondent/claimant was coming from his house Tholayavattam to Karungal to his shop in Puthukadai – Karungal road in his two wheeler bearing Registration No.TN-74-AH-1692 on the left side of the road and in the place at Mankarai another two wheeler bearing Registration No.TN-75-C-4655, which



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came from North to South in a rash and negligent manner and without sounding horn, had dashed against the two wheeler driven by the first respondent/claimant and as a result of which, the first respondent/claimant fell down and sustained head injury and bone injury in his right leg and became unconscious, that he was admitted as an inpatient in Sushrusha Orthopaedic Hospital, Nagercoil and that the accident was occurred only due to the rash and negligent riding of the rider of the two wheeler bearing Registration No.TN-75-C-4655.

4. The defence of the respondents 2 and 3/respondents 1 and 2 is that the second respondent/first respondent never drove the bike bearing Registration No.TN-75-C-4655 at the time of the alleged accident, that the said vehicle was also never involved in the alleged accident, that the first respondent/claimant for the alleged accident occurred on 12.10.2016 gave a written complaint only on 22.01.2017 alleging that the bike bearing Registration No.TN-24-U-8159 had caused the accident, that the first respondent/claimant in the petition itself has specifically admitted that after the accident, he became unconscious and hence, he was unable to identify the vehicle or the person, who had driven the vehicle, that the second respondent/first respondent is aged 73 years and that since their vehicle itself is not involved in the accident, they are not liable for the claim.



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5. The defence taken by the appellant/Insurer is that the alleged vehicle bearing Registration No.TN-24-U-8159 shown in the FIR is not insured with the appellant/Insurer, that FIR has been lodged after three months and the same causes a serious suspicion, that the vehicle bearing Registration No.TN-75-C-4655 has been taken for inspection before the Motor Vehicle Inspector, after about one year, that the vehicle insured with the appellant/Insurer was not at all involved in the accident, that they have not received any claim form or intimation from the alleged owner of the vehicle and that therefore, they are not liable for the claim and the petition is liable to be dismissed.

6. During trial, the first respondent/claimant has examined himself as P.W.1 and one Rajakumar alleged to be occurrence witness as P.W.2 and exhibited 17 documents as Ex.P.1 to Ex.P.17. The respondents 2 and 3/ respondents 1 and 2 have examined the second respondent/first respondent as R.W.1 and adduced no documentary evidence. The appellant/Insurer has examined its Senior Officer as R.W.2 and exhibited the copy of the insurance policy as Ex.R.1.

7. The learned trial Judge, upon considering the evidence, both oral and documentary and on hearing the arguments of both the sides, has passed the



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impugned award dated 07.01.2020, by holding that the rider of the two wheeler bearing Registration No.TN-75-C-4655 was responsible for the accident, directed the appellant/Insurer to pay compensation of Rs.4,80,000/- with interest at 7.5% per annum and costs. Aggrieved by the said award, the Insurer has come forward with the present appeal.

8. The points that arise for consideration are :

(i) Whether the Tribunal erred in rendering a finding that the rider of the two wheeler bearing Registration No.TN-75-C-4655 was responsible for the accident, despite showing that the FIR was lodged after three months period implicating the vehicle bearing Registration No.TN-24-U-8159 and subsequently, charge sheet was laid implicating the vehicle bearing Registration No.TN-75-C-4655, that the vehicle was produced for Motor Vehicle Inspection after one year from the accident, that there was no scope for P.W.2 to witness the accident and that ample evidence was produced to show that the vehicle bearing Registration No.TN-75-C-4655 was not at all involved in the accident?

(ii) Whether the quantum of compensation awarded at by the Tribunal is just and proper and is in accordance with law?

(iii) Whether the award passed by the Motor Accident Claims Tribunal / Chief Judicial Magistrate, Kanyakumari at Nagercoil is liable to be set aside?



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Point Nos.(i), (ii) and (iii) :

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9. Admittedly, even according to the first respondent/claimant, the accident was occurred on 12.10.2016 and FIR came to be registered in Crime No.31 of 2017 on 22.01.2017 for the offences under Sections 279, 337 IPC r/w 134 of Motor Vehicles Act, 1988.

10. It is pertinent to note that in the FIR, the two wheeler bearing Registration No.TN-24-U-8159 was alleged to be involved in the accident, but the jurisdictional Police, after completing the investigation, has laid the final report dated 21.10.2017 and on 07.12.2017, the case was taken on file in S.T.C.No.1260 of 2017 on the file of the Judicial Magistrate, Eraniel. In the charge sheet, it has been specifically stated that the two wheeler bearing Registration No.TN-75-C-4655 was alleged to be involved in the accident. Moreover, the first respondent/claimant, in the claim petition also, has taken a stand that the two wheeler bearing Registration No.TN-75-C-4655, which came from North to South in a rash and negligent manner and without sounding horn, had dashed against the two wheeler driven by the first respondent/claimant and caused the accident.



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11. As already pointed out, it is the specific defence of the appellant/Insurer and the respondents 2 and 3/respondents 1 and 2 that the two wheeler bearing Registration No.TN-75-C-4655 was not at all involved in the accident, that the second respondent/first respondent never drove any two wheeler on the date of accident, that after coming to know that the vehicle originally implicated in the FIR i.e., two wheeler bearing Registration No.TN-24-U-8159 was not having any valid insurance, they have purposely changed the vehicle and that therefore, they are not liable for the claim.

12. The first respondent/claimant, while deposing as P.W.1 would say in his chief examination that when he was proceeding in his two wheeler bearing Registration No.TN-74-AH-1692, another two wheeler bearing Registration No.TN-75-C-4655, came from North to South and at the place near Mankarai junction, the said two wheeler came in a rash and negligent manner and without sounding horn, had dashed against him and as a result of which, he sustained head injury and other injuries. In cross-examination, he would admit that the accident was occurred on 12.10.2016, but FIR was registered on 22.01.2017, that the vehicle was produced for Motor Vehicle Inspection on 09.10.2017 after one year period, that he has preferred the complaint on 22.01.2017 and that



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since no action was taken on his previous complaint, he had lodged another complaint after three months.

13. P.W.2 alleged to be occurrence witness would reiterate the version of the first respondent/claimant that the accident was caused by the two wheeler bearing Registration No.TN-75-C-4655. During cross-examination, he would admit that he was having acquaintance with the first respondent/claimant as he used to stand in his tempo stand near by the flower shop of the first respondent/claimant, that he has not produced the driving license, that he had studied upto 8th standard, that he has not mentioned about the name of the vehicle or its number on 12.10.2016, while filing his chief examination affidavit and that he was not made as a witness in the case filed against the driver, who had dashed against the first respondent/claimant.

14. The second respondent/first respondent in his chief examination affidavit would say that the first respondent/claimant, after coming to know that he has no connection whatever with the vehicle bearing Registration No.TN-24-U-8159, with the help of police, had included the two wheeler bearing Registration No.TN-75-C-4655, belonging to the third respondent/second respondent as if he was riding the vehicle and caused the accident, that he never



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drove any vehicle and caused the accident and that he has no connection with the alleged accident.

15. R.W.2-Senior Officer attached to the appellant/Insurer would say that the first respondent/claimant, after coming to know that the two wheeler bearing Registration No.TN-24-U-8159 was not possessing valid insurance, has purposely added the vehicle bearing Registration No.TN-75-C-4655 owned by the second respondent/first respondent. Though opportunity was given to the first respondent/claimant and the respondents 2 and 3/respondents 1 and 2, they have not chosen to cross-examine the R.W.2.

16. In the accident claim petition, when the owner and insurer disputes the involvement of the vehicle, the burden of proof lies on the first claimant to prove the involvement of the vehicle by adducing cogent evidence. At this juncture, it is necessary to refer the decisions relied on by the learned counsel appearing for the appellant/Insurer,

(i) 2020 (1) TN MAC 400 :

Kasi Viswanathan Vs. Chithanathan and another

“MOTOR VEHICLES ACT, 1988 (59 of 1988), Section 166

– Motor Accident – Involvement of offending vehicle – Proof –



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Correction/alteration of Vehicle Number in FIR in three places – Vehicle Number found to be different in Section 161, Cr.P.C. - Statement – Copy of Complaint not produced – Number of Vehicle mentioned in Charge-sheet and Section 161-statement found to be different – No reasonable explanation given except that of typographical error – Had copy of Complaint produced, original vehicle involved in accident would have been proved – Initial burden upon Claimant not been discharged – Order of Tribunal dismissing Claim Petition upheld.”

(ii) 2021 (1) TN MAC 439 :

Arumugam Vs. P.Srinivasan and another

“MOTOR VEHICLES ACT, 1988 (59 of 1988), Sections 166 & 173 – Dismissal of Claim Petition holding that Respondents not liable to pay Compensation – Legality – Claimant proceeding by walk dashed by Motorcycle causing grievous injuries – Vehicle TDJ-2377 said to be offending vehicle as per FIR – In Claim Petition, vehicle TN-23-B-2878 claimed to be involved in accident – Claimant totally reversed his stand in Claim Petition – Reason for subsequent inclusion of R-1's vehicle not convincing – Claimant implicated vehicle TDJ-2377 before Doctor as also in Letter/Ex.B1 addressed to Insurer – RW1/Insurance Surveyor and RW2/Official of Insurer also deposed about involvement of Motorcycle TDJ-2377 – Further, persons who had taken injured to hospital as per FIR and cited as



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Witnesses in Final Report, not been examined by Claimant – Respondents not being tortfeasors not liable to pay Compensation – Claim as against Respondents rightly dismissed by Tribunal – No interference warranted – Appeal dismissed.”

17. No doubt, the learned counsel appearing for the first respondent/claimant has relied on the judgment of the Hon'ble Supreme Court in ***National Insurance Co. Ltd. Vs. Chamundeswari and others*** reported in **2021 (2) TN MAC 449 (SC)**, wherein, the Hon'ble Apex Court has held that the evidence recorded before the Tribunal is to be used given weightage over contents of FIR. There is no dispute about the above position.

18. Though P.W.1 has implicated the involvement of the two wheeler bearing Registration No.TN-24-U-8159 at the beginning, he has neither furnished any particulars nor produced any materials to show that the two wheeler bearing Registration No.TN-75-C-4655 alone was involved in the accident. The first respondent/claimant has not whispered anywhere as to from whom he came to know about the registration number of the vehicle, which was implicated subsequently. The first respondent/claimant has not shown any reason or ground for the subsequent inclusion of the vehicle bearing Registration No.TN-75-C-4655.



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19. It is pertinent to note that the first respondent/claimant is duty bound to prove negligence on the part of the rider or owner of the vehicle and the burden is on the first respondent/claimant to establish the negligence on the part of the rider or owner of the vehicle and on proving thereof, the first respondent/claimant is entitled to compensation. As already pointed out, though the initial burden is upon the first respondent/claimant, he has not produced any iota of evidence to discharge the burden.

20. No doubt, the first respondent/claimant has produced and exhibited the criminal Court records such as FIR, charge sheet, observation mahazar, Motor Vehicle Inspection report and rough sketch, but the same are not sufficient enough to prove that the vehicle bearing Registration No.TN-75-C-4655 was involved in the accident. As rightly contended by the learned counsel appearing for the appellant/Insurer, though R.W.1 and R.W.2 were cross-examined, nothing was elicited in their favour and their evidence remained unshaken.

21. Since the first respondent/claimant has miserably failed to prove that the two wheeler bearing Registration No.TN-75-C-4655 was involved in the accident and that they have not offered any acceptable reason or explanation for



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changing the vehicle, the appellant/Insurer and the respondents 2 and 3/respondents 1 and 2 are not liable to pay any compensation to the first respondent/claimant. But the Tribunal without considering the evidence available on record in proper perspective, has recorded the findings mechanically that the appellant/Insurer was liable to pay compensation to the first respondent/claimant. Hence, the finding of the Tribunal that the accident was occurred only due to the rash and negligent riding of the second respondent/first respondent and the appellant/Insurer is liable to pay compensation, are not in accordance with law and liable to be set aside. Since the appellant/Insurer and the respondents 2 and 3/respondents 1 and 2 are not liable for the claim, the question of calculating the compensation or to verify the correctness of the compensation awarded by the Tribunal does not arise at all and the above points are answered accordingly. Considering the above facts and circumstances of the case, this Court further decides that the parties are to be directed to bear their own costs.

22. In the result, this Civil Miscellaneous Appeal is allowed and the impugned award passed in M.C.O.P.No.93 of 2018 dated 07.01.2020 on the file of the Motor Accident Claims Tribunal / Chief Judicial Magistrate,



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Kanyakumari at Nagercoil is set aside. Parties are directed to bear their own costs. Consequently, connected Miscellaneous Petition is closed.

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K.MURALI SHANKAR,J.

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To

1. The Motor Accident Claims Tribunal / Chief Judicial Magistrate,
Kanyakumari at Nagercoil.

Pre-Delivery Order made in
C.M.A.(MD)No.258 of 2021
and
C.M.P.(MD)No.5327 of 2022

23.12.2022