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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.11.2023

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.No.3256 of 2012

M/s.ICICI Lombard General Insurance Co. Ltd.,
No.84/85, Waltax Road, Chennai-3.

.. Appellant

Vs.

1. Jeyakumar

2. Estate Logistics Limited,
No.14, Habibullah Road,
T.Nagar, Chennai-17.

.. Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 13.03.2012 made in MACT. OP.No.325 of 2010 on the file of the Motor Accidents Claims Tribunal, Additional District Court-II, Poonamallee.

For Appellant : Mrs.P.T.Ramadevi

For Respondents : No appearance

J U D G M E N T

This appellant has come forward with this appeal seeking quantum of compensation in the judgment and decree dated 13.03.2012 made in MACT. OP.No.325 of 2010 on the file of the Motor Accidents Claims Tribunal,



Additional District Court-II, Poonamallee.

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2. Brief facts which are necessary for disposal of this appeal are as follows:-

On 20.10.2009 at 8.10 pm when the first respondent was travelling in a motor cycle bearing Reg. No. TN 55 K 6187 and he was waiting in Ethiraj Salai, at that time, a Tata Indica car bearing Reg. No. TN 09 AW0840, driven by its driver, in a rash and negligent manner, dashed against the first respondent, due to which, he sustained injuries and admitted in the hospital for treatment. Thereafter, the claimant has filed a claim Petition before the Motor Accidents Claims Tribunal under Section 166 of the Motor Vehicle Act, claiming compensation of Rs.3,00,000/-

3. Before the Tribunal, during trial, in order to prove the case, on the side of the claimant, two witnesses were examined viz., PW1 to PW2 and marked 5 documents viz., Exs. P1 to P5, On the side of the respondent/Insurance company, one witness was examined and one document was marked. The Tribunal, considering the pleadings, oral and documentary evidence, awarded a sum of Rs.1,31,107/- payable by the



insurance company. Questioning the liability, the appellant/insurance company, has filed this appeal before this Court.

4. The learned counsel for the appellant submitted that the Tribunal has erred in fastening the liability on the appellant insurance company when the claim was fabricated and the insured vehicle was not involved in the accident. The Tribunal has failed to consider that the first respondent has lodged FIR with delay of six months after the date accident and no accident index register has been filed to prove the alleged accident. The Tribunal failed to appreciate the evidence of RW1 and Ex.R1 which clearly proves that the insurance vehicle was falsely implicated and case against the insured driver was dropped for want of evidence.

5. This Court gave its careful consideration to the submissions advanced by the learned counsel appearing for the appellant and perused the materials available on record. Though the name of the respondents have printed in the cause list and no one appeared on their behalf. Considering the pendency of the case, this Court is inclined to dispose the same based on the available records.



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6. The facts of the case are not in dispute. It is the main grievance of the appellant is that the accident has alleged by the claimant, has not taken place and one Velayutham had suffered injuries in an accident, in which, the vehicle was involved who had filed MCOP.No.4439 of 2009. The claimant had filed a claim petition after a delay of four months which clearly shows that the claim petition itself is fabricated for the purpose of getting compensation from the appellant.

7. The Tribunal has quantified the compensation and directed the appellant to pay the compensation. However, on perusal of the materials available on record, reveals that the FIR which was registered after a period of four months from the date of occurrence and the complaint of the claimant was dropped by the Law Enforcing Agency as the claimant was not able to produce any document to substantiate his claim.

8. Though the above said contentions have been raised by the appellant, the contention relating to the delay in lodging the FIR by the claimant with a delay of four months assumes significance. A perusal of the



claim petition reveals that no reason has been attributed by the claimant for filing a complaint after a period of four months. When no reason has been attributed by the claimant for the delay in filing the complaint, necessarily the Tribunal ought to have carefully considered the contention of the appellant herein with regard to the accident proper as according to the appellant, the accident as alleged by the claimant had not taken place. Further, as stated above, the Law enforcing Agency having dropped the complaint filed by the claimant with regard to accident for want of any materials being submitted by the claimant. The dropping of the case coupled with the delay in filing with the petition clearly cause a serious doubt as to the manner in which the accident is alleged to have occurred. Without properly appreciating all the aforesaid facts, the Tribunal has erroneously fastened the on the insurer/appellant herein, which is perverse and arbitrary and the same cannot be sustained.

9. For the reasons afore stated, this Civil Miscellaneous Appeal is allowed by setting aside the order passed by the Tribunal. No costs.

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M.DHANDAPANI,J.

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Index : Yes
Speaking Order : Yes
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To

The Motor Accidents Claims Tribunal,
Additional District Court-II, Poonamallee.

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