IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.07.2023

Coram:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

C.M.A.No.1505 of 2018 and
CMP No.11988 of 2018

Bajaj Allianz General Insurance Co. Ltd.
25/26, Prince Tower,
4th Floor, College Road,
Nungambakkam, Chennai ... Appellant

Vs.

1. Kumeresan

2. Poovizhi .. Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Award and decree dated 01.09.2017 made in M.C.O.P.No.589 of 2012 on the file of the Motor Accidents Claims Tribual, III Additional District Judge, Kallakurichi.

For Appellant : Mr.S.Arun Kumar

For Respondents : R1- Notice Served, No Appearance
R2 - Substituted Service
(Paper Publication filed), No Appearance

J U D G M E N T

This Civil Miscellaneous Appeal is filed against the Award and decree dated 01.09.2017 made in M.C.O.P.No.589 of 2012 on the file of the Motor Accidents Claims Tribual (III Additional District Court), Kallakurichi.

2. Before the Tribunal, the appellant/Insurance Company was arrayed as 2nd respondent and the 2nd respondent herein who is the owner of the offending vehicle, was arrayed as 1st respondent. The 1st respondent herein is the claimant.

3. The case of the 1st respondent/claimant is that he was working as a Senior Sales Manager in a private Insurance company. On 22.05.2010, at about 21.30 hrs., when he was standing in Madur Bus Stop between Kallakurichi - Thiyagadurgam Road, the driver of the 2nd respondent, who drove the vehicle bearing Regn. No.TN-32-L-1334 (Apc Auto), in a rash and negligent manner, dashed against the 1st respondent/claimant, due to which, he sustained fracture on his right lateral tibial bone. The said vehicle was insured with the appellant herein. Immediately, soon after the accident, he was admitted in a hospital. Since no one was there to take care of him, he

could not lodge a complaint immediately. Later, he lodged the complaint through one Selvaraj, based on which, a case was registered against the 2nd respondent herein, who is the owner of the offending vehicle.

4. The claimant/1st respondent had filed a claim petition in M.C.O.P. No.589 of 2012 on the file of the Motor Accident Claims Tribunal (III Additional District Court), Kallakurichi, claiming a sum of Rs.4,00,000/- as compensation for the injuries sustained by him due to the road accident that took place on 22.05.2010 stating that, at the time of accident, he was aged 45 years and was working as Senior Sales Manager in a private insurance company and was earning a sum of Rs.25,000/- per month and due to the accident, he could not attend to his work like before.

5. The 2nd respondent herein/owner of the vehicle, remained ex-parte before the Tribunal.

6. The appellant/Insurance Company, which was arrayed as 2nd respondent before the Tribunal, in its counter, has stated that the alleged offending vehicle was not at all involved in the alleged accident as mentioned by the claimant. The FIR was registered belatedly after 20 days, against

"unknown driver" of the 2nd respondent herein on 12.06.2010, whereas, the alleged accident was said to have taken place on 22.05.2010. The investigation also revealed that there was no such accident that had taken place and the 2nd respondent's vehicle was not involved in the said accident. Even the claimant has given statement to the Police that he does not know as to which vehicle had hit him on the date of the alleged accident. The vehicle of the 2nd respondent was shown only to get compensation. Further, no copy of the Accident Register was produced before the Court. The delay in filing the FIR and non production of a copy of the Accident Register, are fatal to the case of the claimant. Since the 2nd respondent's vehicle was not involved in the said accident, the appellant/Insurance Company is not liable to pay any compensation. Though the 2nd respondent's vehicle, namely the alleged offending vehicle was insured with the appellant/Insurance Company, the claimant has not proved that the said vehicle only was involved in the accident and the driver of the 2nd respondent only had caused the accident, due to which, he sustained injury.

7. After the pleadings, the Tribunal partly allowed the claim petition by fixing the liability on the appellant/Insurance Company alleging that the offending vehicle only was involved in the accident and the 2nd respondent's

driver who drove the said vehicle on the said date, had caused the injury to the claimant and therefore, the appellant, being the insurer of the alleged offending vehicle, is liable to pay compensation to the claimant. The Tribunal directed the appellant/Insurance company to pay a sum of Rs.3,67,000/- with interest at 7.5% p.a., from the date of the claim petition till the date of deposit (excluding the period of dismissal for default, if any) and thereafter, the appellant/Insurance company can recover the compensation amount from the owner of the vehicle/2nd respondent herein. Challenging the said award passed by the Tribunal, the Insurer of the offending vehicle has filed the present appeal.

8. The learned counsel for the appellant/Insurance Company submitted that the alleged vehicle was not at all involved in the accident. The accident took place on 22.05.2010 at about 21.30 hrs., whereas, the FIR was registered only on 12.06.2010, which is after 20 days of the date of the alleged accident and the claimant has not given proper explanation for the delay in lodging the complaint. The learned counsel further submitted that Accident Register was not marked in this case. If at all the claimant had sustained injury due to the accident, while admitting in the hospital, entry might have been made in the Accident Register. But no such document was produced. Even though the

Police had registered the case against "unknown driver" of the 2^{nd} respondent's vehicle, based on the complaint given by one Selvaraj, who is a relative of the claimant, belatedly on 12.06.2010, subsequently, the complaint was closed as "mistake of fact". Even in Ex.R1/Final Report, it is clearly stated that the averments made in the complaint are not true and the de-facto complainant, as per the advice of his Advocate, in order to get compensation, has given the complaint by mentioning the vehicle number. The other witnesses have stated that they did not see the Registration Number of the vehicle which caused the accident. Therefore, from the final report, it is clear that, only in order to get compensation, the 2^{nd} respondent's vehicle has been wrongly mentioned in this case. The said vehicle was actually not involved in the accident. The Tribunal failed to consider the oral and documentary evidence and wrongly fixed the liability on the appellant/Insurance Company, as if the alleged vehicle only was involved in the accident and passed an award of pay and recovery. The learned counsel reiterated that the complaint was lodged belatedly after 20 days and there was no production of copy of the Accident Register for taking treatment in Government Hospital and that the FIR itself was closed as "mistake of fact". Therefore, the complaint itself is doubtful. Since the claimant has not proved his case that the said vehicle was only involved in the accident, the appellant/Insurance Company need not pay any compensation to the claimant and the appreciation of evidence for awarding compensation by the Tribunal, is perverse. Therefore, the appeal may be allowed and the impugned award passed by the Tribunal may be set aside.

9. Heard the learned counsel for the appellant/Insurance Company and perused the records.

10. Notice was served on the 1st respondent and substituted service (Paper publication) was effected in respect of the 2nd respondent and the names of the respondents were also printed in the cause list. However, there is no representation for the respondents either in person or through counsel.

11. The specific case of the appellant/Insurance company is that no accident had taken place and the vehicle mentioned in the claim petition was not at all involved in the accident and only to get compensation, the said vehicle has been wrongly mentioned. Further, the complaint was given belatedly after 20 days from the date of accident and no copy of Accident Register was produced and that the FIR which was registered against

"unknown driver" of the 2nd respondent's vehicle, was subsequently closed as "mistake of fact".

12. Though the Tribunal discussed about all those points and cited certain Judgments for delay in lodging the FIR, involvement of vehicle and also identity of vehicle and fixing the liability of the vehicle and_awarding compensation, a reading of the evidence of P.W.1 and Ex.P.1/FIR, clearly shows that though the accident had taken place on 22.05.2010, the complaint was lodged only on 12.06.2010, which is after 20 days of the alleged accident. Though the complaint was given by one Selvaraj, the relative of the claimant, he was not examined as a witness on the side of the claimant. The claimant alone was examined as P.W.1 but, he did not give any complaint before the Police and he has stated that due to non availability of person for help, he could not give the complaint immediately. The Investigating Officer who investigated the case, has closed the complaint as "mistake of fact" stating that as per his investigation, the averments made in the complaint are not true and that the de-facto complainant/Selvaraj, as per the advise of his Advocate, in order to get the compensation to the victim, has given the complaint by mentioning the vehicle number. When that being the case, the

claimant should have examined the said Selvaraj/de-facto complainant. But he has not examined him. As contended by the leaned counsel for the appellant/Insurance Company, when an accident happens and any person sustains accidental injury and is admitted in the hospital, it is the duty of the hospital authority to make entry in the Accident Register about the accident and also the nature of injuries sustained by the victim, which were visible apparently. Whereas in this case, no copy of Accident Register was marked despite the appellant/Insurance Company denied the liability and also the accident. Therefore, the non examination of the de-facto complainant is fatal to the case of the claimant. The non production of copy of Accident Register is also fatal to the case of the claimant. When the claimant himself has stated that he did not give the complaint and his relative, i.e. the said Selvaraj only gave the complaint on behalf of him and subsequently, when the complaint was closed as "mistake of fact", it is the duty of the claimant to establish his case that the alleged vehicle only was involved in the accident and the driver of the said vehicle only had caused him the accidental injuries. In the absence of the same, this Court finds that the Tribunal has failed to properly appreciate the oral and documentary evidence which were placed before it and based on the presumption and conjectures, erroneously fixed the liability on the appellant/Insurance Company only on sympathetical ground without any valid oral and documentary evidence.

13. As an appellate Court, final Court of fact finding, this Court has to re-appreciate the entire evidence and has to give independent findings. This Court, while re-appreciating the entire oral and documentary evidence, finds that the appreciation of evidence by the Tribunal is perverse and therefore, the impugned award passed by the Tribunal is liable to be set aside.

14. Accordingly, this Civil Miscellaneous Appeal is allowed. The award passed by the Tribunal fixing liability on the appellant/Insurance Company in M.C.O.P.No.589 of 2012 dated 01.09.2017 on the file of the Motor Accidents Claims Tribunal (III Additional District Court), Kallakurichi, is set aside. Consequently, connected Miscellaneous Petition is closed. There shall be no order as to costs in the present appeal.

15. The appellant/Insurance Company is permitted to withdraw the amount, if any already deposited by them before the Tribunal.

18.07.2023

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Index : Yes / No
Speaking Order : Yes / No
Neutral Citation Case : Yes/No

To

1.The Motor Accidents Claims Tribual,
(III Additional District Judge), Kallakurichi

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

P.VELMURUGAN. J.

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C.M.A. No.1505 of 2018

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