



C.M.A.No.2017 of 2018

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**DATED :20.09.2023**

**CORAM**

**THE HON'BLE MR. JUSTICE P.VELMURUGAN**

**C.M.A.No.2017 of 2018**

**and**

**C.M.P.No.15682 of 2018**

Cholamandalam MS General  
Insurance Company Limited,  
'Dare House', 2<sup>nd</sup> Floor,  
N.C.Bose Road, Chennai – 600 001.

... Appellant

Vs.

1. P.Ramanathan

2. A.Sukumaran

... Respondents

**PRAYER:** Civil Miscellaneous Appeal filed under Section 173 of M.V.Act 1988 against the judgement and decree in M.C.O.P.No.2116 of 2014 dated 18.04.2015 on the file of the Motor Accidents Claims Tribunal, Special Subordinate Court, Dharmapuri.

For Appellant : M/s.C.Harini  
for Mr.M.B.Gopalan Associates

For R1 : Mr.R.Rajesh Krishnan  
for M/s.A.Ilayaperumal

For R2 : Notice Dispensed with

**J U D G E M E N T**



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Appellant is the Insurance Company. The first respondent is the claimant. He filed the claim petition in M.C.O.P.No.2116 of 2014 on the file of the Motor Accidents Claims Tribunal, Special Subordinate Court, Dharmapuri.

2. After enquiry, the Tribunal awarded a sum of Rs.2,40,000/- to the claimant. Challenging the same, the Insurance Company has filed the present Civil Miscellaneous Appeal before this Court.

3. Learned counsel for the appellant/Insurance Company submitted that the accident had taken place on 12.12.2007, whereas, a case was registered only on 03.03.2009. After investigation, the Police closed the case. No material has been produced by the claimant to show that on 12.12.2007 the accident had occurred only due to rash and negligent driving of the driver of the offending vehicle/Tipper lorry, bearing Registration No.K.A.01C.1935. The claimant, who is the first respondent herein has not produced A.R copy. Even in the F.I.R, the



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claimant/first respondent has stated that he was admitted in the Government Hospital, Dharmapuri, where intimation was given to the Police and the Police has not taken any action with regard to the accident. If that be so, there must be an entry in the Accident Register. But the claimant has not produced the copy of A.R to show that on the date of accident, he was admitted in the Government Hospital. The Police after registering the case, conducted investigation and the Police officer, who conducted investigation, was examined as R.W.2 who has categorically stated that he could not get any document from the hospital and no document was available in the hospital with regard to the abovesaid accident. Except the first respondent/claimant, no one was examined to show that the offending vehicle was involved in the accident. No records from the Government Hospital had been produced. Only private Doctor was examined. Wound certificate was issued by the private hospital. The claimant has not proved that only the offending vehicle was involved in the accident. No reason has been assigned by the claimant as to why he has lodged the complaint after 13 months from the date of accident. No proper explanation has been offered by the first respondent/claimant



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with regard to delay in lodging the complaint. The Tribunal failed to consider the oral and documentary evidence, and awarded compensation to the claimant only on sympathetic ground, which warrants interference by this Court.

4. Learned counsel appearing for the first respondent/claimant submitted that the first respondent met with an accident on 12.12.2007 and immediately after the accident, he was admitted in the Government Hospital. The duty Doctor who attended the claimant, made an intimation to the Police. But the Police has not taken any action with regard to the accident. After he has taken treatment, the claimant made complaint before the Police and the Police has not properly investigated the matter and closed the same. No document is available to show that the case was closed as mistake of fact. The accident had occurred only due to rash and negligent driving of the driver of the offending vehicle ie., Tipper lorry. Due to that accident, the first respondent/claimant sustained injury. The Tribunal rightly appreciated evidence and held that mere delay in registering the F.I.R or mere delay in filing the complaint, may not be the



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sole ground to disbelieve the evidence of P.W.1/claimant. Due to the accident, the claimant sustained injury and he was admitted in the hospital. The duty Doctor has also rightly intimated the same to the Police. It is the fault on the part of the Police. Since the Police failed to register the case, the claimant should not suffer. The Tribunal rightly appreciated the evidence and found that the offending vehicle was involved in the accident, due to which, the claimant sustained injury. There is no merit in the appeal and the same is liable to be dismissed.

5. Heard learned counsel appearing on either side and perused the materials available on record.

6. Admittedly, the accident was said to have taken place on 12.12.2007 whereas, the F.I.R was registered only on 03.03.2009. In the claim petition, the first respondent/claimant has not offered any reason for the delay in filing the F.I.R. The claimant has not produced any A.R entry to show that he has taken treatment in the hospital at the time of accident. Copy of the Accident Register is the primary document.



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Though the first respondent/claimant has stated that the duty Doctor has given the intimation to the Police, but the document was not marked by the first respondent/claimant. The doctor who sent the intimation to the Police, was not examined by the claimant to ascertain as to whether the accident was intimated to the Police.

7. According to the claimant, the Police received the information on the same date of accident ie., on 12.12.2007 and despite receiving information, the Police has not registered the case. The complaint has not been taken by the officer incharge of the Police, who has received the said information. If at all they had given the intimation, the Police received the intimation and immediately, they approached the hospital and they would record the statement from them and if at all the intimation is true, if the Police has not come to the hospital within the reasonable time, either the Doctor, would have given information or the first respondent claimant would have approached the Police through his relatives. Even in the Government Hospital, there is an out-post in the hospital premises itself. Immediately after receipt of the information, the



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residential Doctor would intimate the out post regarding the accident.

None of the steps have been taken by the claimant to prove his case.

Except F.I.R, nowhere, it is stated that the offending vehicle ie., Tipper lorry bearing registration No. K.A.01.C.1935 was involved in the accident. Driver of the offending vehicle who was examined as R.W.1, has clearly stated that no accident had occurred. After filing the F.I.R, the Police has closed the case. They have neither arrested nor filed any charge sheet as against the driver of the offending vehicle. It is the duty of the claimant who seeks compensation from the Insurance Company, to prove that the insured vehicle was involved in the accident and due to that accident, he sustained injury. The Insurance Company is liable to indemnify the loss caused to the injured due to the accident. The claimant has not examined any other witness and he has stated that while he was standing near JCB machine, the driver of the offending Tipper lorry drove the lorry in a rash and negligent manner and caused injury to the claimant. The claimant has not examined the driver of the JCB machine or any other independent witness to prove his case that on the date of occurrence, ie., on 12.12.2007, he met with an accident and due



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to rash and negligent driving of the driver of the offending vehicle, the accident had occurred. Cogent evidence has to be let in. Even though, in the claim petition, the claimant need not prove the case beyond reasonable doubt. However, it is a beneficial legislation and the claimant has to prove the foundational fact with preponderance of probabilities. There are no materials to show that the accident had occurred only due to rash and negligent driving of the driver of the offending vehicle and the claimant has not proved the same. After registering the F.I.R, R.W.2 has also clearly stated that they could not collect any document from the Government Hospital. Therefore, this Court finds that the claimant has not proved that the accident that had occurred only due to rash and negligent driving of the driver of the Tipper lorry and the Tipper lorry was involved in the accident, due to which, the first respondent/claimant has sustained injuries. The Tribunal failed to appreciate the evidence in proper perspective and the findings of the Tribunal are erroneous.

8. This Court, as an appellate court and final Court of fact finding,



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has to re-appreciate the entire evidence and give independent findings.

This Court had carefully gone through the entire materials and also considering the submissions made by both the parties, finds that the first respondent/claimant has not proved that the offending vehicle was involved in the accident and the accident had occurred due to rash and negligent driving of the driver of the offending vehicle.

9. Therefore, under the above circumstances, the Award and decree dated 18.04.2015 passed in M.C.O.P.No.2116 of 2014 on the file of the Motor Accidents Claims Tribunal, Special Subordinate Court, Dharmapuri is set aside and the Appeal is allowed. The Insurance Company is permitted to withdraw the amount, if any already deposited by them before the Tribunal. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

**20.09.2023**

*mfa*

*Index: Yes/No*

*Speaking Order: Yes/No*

*Neutral Citation: Yes/No*



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**To**

1. Motor Accidents Claims Tribunal,  
Special Subordinate Court,  
Dharmapuri.
2. The Section Officer,  
VR Section,  
High Court, Madras.



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**P.VELMURUGAN, J.**

*mfa*

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