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C.M.A. No.338 of 2018



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.09.2023

Coram:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

C.M.A. No.338 of 2018

and

C.M.P. No.3349 of 2018

The Tata AIG General Insurance Company Ltd.,
Rep. by its Manager, Peninsula Business Park,
Tower A, 15th Floor, Ganpathrao Kadam Marg,
Lower Parel, Mumbai - 400 013

... Appellant

Vs.

1. Murugan

2. Chairman, Jeyam Engineering College,
Nallanur, Pennagaram Main Road,
Dharmapuri - 636 813

... Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 14.07.2017, made in M.C.O.P. No.393 of 2015, on the file of the Motor Accident Claims Tribunal (Court of Chief Judicial Magistrate), Dharmapuri.

For Appellant : Mr.K.Vinod

For Respondents : Mr.S.Sathiaseelan for R1
R2-Notice Served, No appearance.



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JUDGMENT

This Civil Miscellaneous Appeal is filed against the Award and decree dated 14.07.2017, made in M.C.O.P. No.393 of 2015, on the file of the Motor Accident Claims Tribunal (Court of Chief Judicial Magistrate), Dharmapuri.

2. The appeal is filed by the Insurance Company. The 1st respondent is the claimant. The 2nd respondent is the owner and the appellant is the insurer of the offending bus bearing Regn. No.TN-48-Q-0333.

3. The case of the claimant is that, on 06.03.2015, the 1st respondent/claimant was riding his two wheeler bearing Regn. No.TN-29-A-6510 having one Suresh as pillion rider, from East to West in Dharmapuri to Pennagaram main road, slowly and carefully, keeping on the left side of the road. At about 5.30 p.m., near Sompatty bus stop, the college bus of the 2nd respondent bearing Regn. No.TN-48-Q-0333 was coming on the opposite direction, driven by its driver in a rash and negligent manner. In the meantime, a two wheeler bearing Regn. No.TN-29-AQ-8007, driven by one



Manoj Kumar, was coming in front of the bus. On seeing the above two wheeler, the 1st respondent/claimant almost stopped his two wheeler on the left side of the road. However, the said Manoj Kumar, dashed against his two wheeler and fell down on the road. At that time, the said bus ran over the Manoj Kumar and dashed against the 1st respondent/claimant with two wheeler and due to that impact, the 1st respondent/claimant sustained injuries.

4. The injured filed a claim petition in M.C.O.P. No.393 of 2015 on the file of the Motor Accident Claims Tribunal (Court of Chief Judicial Magistrate), Dharmapuri, claiming compensation of Rs.10,00,000/- stating that at the time of accident, he was aged 35 years and was running a provisional shop and earning Rs.20,000/- per month. Due to the accident, he sustained fracture on the right hand and right leg and also underwent a surgery and was not able to walk and do any work as before the accident.

5. Before the Tribunal, the owner of the offending bus/2nd respondent herein remained ex-parte.



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6. The Tribunal, after hearing the arguments and considering the materials, awarded compensation of Rs.3,99,097/- and directed the 2nd respondent therein/insurer of the offending bus to pay the said compensation with costs and interest at the rate of 7.5% per annum from the date of claim petition till realization.

7. Aggrieved by the Award passed by the Tribunal, the Insurance Company has filed the present appeal.

8. The learned counsel for the appellant/Insurance company submitted that the Tribunal failed to consider Ex.P.1/FIR, in which, the complainant who is the father of the deceased Manoj Kumar had clearly stated that the accident had occurred only due to the rash and negligent riding of the deceased Manoj Kumar, who rode the two wheeler bearing Regn. No.TN-29-AQ-8007 and that the said bus did not have any impact with the two wheeler of the 1st respondent/claimant. The accident occurred due to head-on-collision between the said 2 two wheelers, due to which, both the riders of the two wheelers fell down. At that time, the back-side wheel of the bus ran over the said Manoj Kumar and it is not due to the rash and negligent



driving of the driver of 2nd respondent's bus. Even the charge sheet and the rough sketch clearly show that the accident had occurred not due to the rash and negligent on the part of the driver of the 2nd respondent's bus which was insured with the appellant/Insurance company. The Tribunal failed to consider the same and simply fastened the liability on the driver of the bus. Therefore, the appellant/Insurance Company is not liable to pay any compensation to the 1st respondent/claimant. Hence, the impugned Award passed by the Tribunal is liable to be set aside.

9. The learned counsel for the 1st respondent submitted that the 1st respondent/claimant who sustained injuries in the said accident, was examined as P.W.1 and he has clearly stated that, on seeing the two wheeler which was coming on the opposite direction, rode by the said Manoj Kumar, he stopped his vehicle. However, Manoj Kumar's two wheeler dashed against the two wheeler of the 1st respondent/claimant, due to which, Manoj Kumar fell down. At that time, the 2nd respondent's bus, driven by its driver in a rash and negligent manner ran over the Manoj Kumar and also dashed against the 1st respondent/claimant. Due to the accident, Manoj Kumar died on the spot and the 1st respondent/claimant sustained injuries. Though the FIR/complaint



was given by the father of the deceased Manoj Kumar, he is not an eye-witness to the accident. One of the eyewitnesses to the accident, namely Suresh who is the pillion rider of two wheeler bearing, bearing Regn. No.TN-29-A-6510, was examined as P.W.2 and his evidence corroborated the evidence of P.W.1/1st respondent/claimant. The Tribunal went wrong in holding that R.W.2, the driver of the bus was an interested witness, without testing his testimony, which was not shaken in the cross examination. Further, the Motor Vehicle Inspector's report of the bus says that the bus got damaged in the front side near-by the door of the driver, which clearly shows that the bus was involved in the accident and not as stated by the learned counsel for the appellant/Insurance Company that the bus never involved in the accident. Therefore, the Tribunal rightly appreciated the oral and documentary evidence and given the findings. The FIR is not an Encyclopaedia and the materials in the criminal case or the investigation will not bind the Tribunal and there must be an independent evidence before the Tribunal and the Tribunal has to consider the materials available before it. Therefore, the materials available before the Tribunal, would clearly show that the accident had occurred only due to the rash and negligent driving of the driver of the bus belongs to the 2nd respondent, which is insured with the



appellant/Insurance Company. Therefore, the Tribunal rightly fixed the liability on the appellant/Insurance Company, since the 2nd respondent's vehicle was insured with the appellant/Insurance Company at the time of accident. Therefore, there is no merit in the appeal and the same is liable to be dismissed.

10. Heard the learned counsel for the appellant and the learned counsel for the 1st respondent and perused the materials available on record.

11. It is seen that, due to the accident, the riders of the 2 two wheelers, namely the 1st respondent/claimant sustained injuries and the said Manoj Kumar died on the spot. According to the appellant/Insurance Company, the accident had not occurred due to the rash and negligent driving of the driver of the bus belonging to the 2nd respondent, which is insured with the appellant/Insurance Company and therefore, the appellant/Insurance Company is not liable to pay any compensation.

12. According to the 1st respondent/claimant, on the date of accident, he was riding his two wheeler bearing Regn. No.TN-29-A-6510



along with a pillion rider and on seeing the two wheeler bearing Regn.

No.TN-29-AQ-8007, rode by the said Manoj Kumar, coming in front of the bus in the opposite direction, he stopped his two wheeler on the left side of the road. However, the two wheeler of the Manoj Kumar, dashed against his two wheeler and therefore, Manoj Kumar fell down on the road. At that time, the bus belonging to the 2nd respondent, insured with the appellant/Insurance Company, driven by its driver in a rash and negligent manner, ran over Manoj Kumar and at the same time, dashed against the two wheeler of the 1st respondent/claimant. Due to that impact, the 1st respondent/claimant sustained injuries and the Manoj Kumar died on the spot. If at all the driver of the bus was cautious, the accident could have been avoided.

13. It is settled proposition of law that FIR is not an Encyclopaedia. In this case, admittedly, the informant of the FIR is not an eye-witness to the accident. P.W.1 who is the injured/1st respondent and P.W.2 are the eyewitnesses to the accident and they have clearly deposed the manner of accident. The appellant/Insurance Company has not proved otherwise that the accident had occurred only due to the rash and negligent riding of the rider of both the two wheelers. The Tribunal rightly held that



any documents obtained during the course of investigation in the Criminal case may not bind the Tribunal and the Tribunal has to consider the materials available before it independently.

14. This Court as an appellate Court and final Court of fact finding, while re-appreciating the entire materials, finds that the accident had occurred only due to the rash and negligent driving of the driver of the bus, which belonged to the 2nd respondent and insured with the appellant/Insurance Company.

15. Therefore, this Court finds that there is no merit in the appeal filed by the Insurance Company and the same is liable to be dismissed.

16. Accordingly, the Civil Miscellaneous Appeal is dismissed. Consequently, connected Miscellaneous Petition is closed. There shall be no order as to costs.

05.09.2023
(1/2)

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Index : Yes / No

Speaking Order : Yes / No

Neutral Citation Case : Yes/No

To

- 1.The Motor Accidents Claims Tribunal, Sub Judge, Sankari.
- 2.The Section Officer, VR Section, High Court, Madras.



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P.VELMURUGAN, J

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