



C.M.A.No.2462 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.10.2023

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.No.2462 of 2014

And

M.P.No.1 of 2014

The Divisional Manager
M/s.United India Insurance Co. Ltd.,
Puducherry.

... Appellant

Vs.

1.Tamilarasan
2.N.Ramalingam
3.Kalaiarasan

4.The Branch Manager,
M/s.National Insurance Co. Ltd.,
Puducherry.

... Respondents

Prayer:

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree in M.C.O.P.No.33 of 2007, dated 17.02.2014 on the file of the Motor Accidents Claims Tribunal, II Additional District Court, Pondicherry.

For Appellant : Mr.E.Rajadurai
for M/s.M.B.Gopalan Associates
For Respondents : Mr.M.Devaraj for R1
R2 – NRN
R3 – No Appearance
Mr.D.Baskaran for R4



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J U D G M E N T

The second respondent Insurance Company before the II Additional District Court, Motor Accidents Claims Tribunal, Puducherry, is the appellant herein. This appeal has been filed seeking to set aside the order dated 17.02.2014 passed by the Motor Accidents Claims Tribunal, II Additional District Court, Puducherry in M.C.O.P.No.33 of 2007.

2.The brief facts of the case is that the respondents 1 and 3 are brothers. On 04.06.2006 at about 11.30 a.m., the third respondent was riding motor cycle bearing Registration No.PY 01 R 8575 insured with the fourth respondent in Sedurapet – Puducherry Road and the first respondent was travelling as a pillion rider. When they were at Thrichitrambalam opposite to Venkadeswara weight bridge, a motor cycle bearing Registration No. TN 31 E 4954 owned by the second respondent and insured with the appellant came in the opposite direction and dashed against the motor cycle driven by the third respondent, due to which, the first respondent sustained grievous injuries.



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3. Thereafter, the injured first respondent/ claimant filed claim petition before the Motor Accidents Claims Tribunal, II Additional District Court, Puducherry, claiming compensation of Rs.10 Lakhs. After adjudication, the Motor Accidents Claims Tribunal, II Additional District Court, Puducherry awarded a sum of Rs.2,10,000/- with interest at the rate of 7.5% from the date of petition i.e., 17.01.2007 till the date of payment and costs and directed the appellant Insurance Company to pay the compensation. Aggrieved by the same, the appellant Insurance Company has filed this appeal.

4. The learned counsel appearing for the appellant submitted that the first respondent sustained injuries due to the carelessness and negligence of the respondents 1 and 3. The learned counsel further submitted that though the alleged accident happened on 04.06.2006, F.I.R. was registered on 18.09.2006 after a lapse of three months and F.I.R. is contrary to the discharge summary prepared by the duty Doctor. The said fact was established by RW1, driver of the vehicle insured with the appellant and examined by the appellant Insurance Company and he deposed that the vehicle driven by him has not met with an accident. RW1 denied the accident and no one was summoned



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in respect of the vehicles belonging to the second respondent or third respondent. Thereafter, the case was referred as 'mistake of fact' by the law enforcing agency. All the evidence categorically held that on that day there was no accident, however, the Tribunal proceeded with the case as though there was accident and passed award contrary to the self declaration made by the first respondent before the Doctor that the two wheeler skited and he fell down and sustained injuries.

5.The learned counsel appearing for the first respondent submitted that the accident occurred due to the rash and negligent driving of the driver of the second respondent. The learned counsel further submitted that the driver of the offending vehicle was examined as RW1 and the Sub Inspector of Police was examined as RW2 and their evidence is not sufficient to prove the claim made by the first respondent.

6.Heard the arguments advanced by the learned counsel appearing for the appellant as well as the learned counsel appearing for the respondents 1 and 4 and perused the materials available on record.



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7.The first respondent claim that on 04.06.2006, the third respondent was riding the motor cycle insured with the fourth respondent in Sedurapet – Puducherry Road and the first respondent was travelling as a pillion rider. When they were at Thrichitrambalam opposite to Venkadeswara weight bridge, the driver of the motor cycle owned by the second respondent and insured with the appellant came in the opposite direction in a rash and negligent manner and dashed against the motor cycle driven by the third respondent, due to which, the first respondent sustained grievous injuries.

8.In order to prove his claim, the first respondent examined three witnesses as PW1 to PW3 and marked 16 exhibits Ex.P1 to Ex.P16 before the Tribunal. The appellant and the second respondent examined three witnesses as RW1 to RW3 and marked exhibits Ex.R1 and Ex.R2 before the Tribunal.

9.A perusal of the evidence of RW1 and RW2 makes it clear that RW1 driver of the offending vehicle has categorically deposed that the vehicle driven by him has not met with an accident and RW2 Sub Inspector of Police has categorically admitted that no one was arrested



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with regard to the alleged accident and no investigation was conducted and the case was referred as 'mistake of fact'. Further, perusal of the brief history in the discharge summary dated 09.06.2006 marked by the appellant before the Tribunal as Ex.R2 reveals that the first respondent has clearly stated that when he was going in a two wheeler at Thrichitrambalam opposite to Venkadeswara weight bridge, the two wheeler skited and he fell down on the road and sustained injuries and the same was not properly adjudicated by the Tribunal and the Tribunal mechanically arrived at a conclusion and fixed the liability on the part of the appellant Insurance Company, which is not sustainable and the same is perverse.

10.In view of the above, the Judgment and Decree dated 17.02.2014 made in M.C.O.P.No.33 of 2007 by the Motor Accidents Claims Tribunal, II Additional District Court, Puducherry is set aside. The appellant Insurance Company is permitted to withdraw the amount, if any, already deposited by them to the credit of M.C.O.P.No.33 of 2007 before the Motor Accidents Claims Tribunal, II Additional District Court, Puducherry.



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11.The civil miscellaneous appeal is allowed. No costs.

Consequently, the connected miscellaneous petition is closed.

06.10.2023

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Speaking Order/ Non Speaking Order

Index: Yes/ No

Internet: Yes/ No

To

1.The Motor Accidents Claims Tribunal
II Additional District Court,
Puducherry.



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M.DHANDAPANI,J.
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