



CMA.No.441 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.10.2023

CORAM: JUSTICE N.SESHASAYEE

CMA.No.441 of 2022

R.Sekar

... Appellant

-Vs-

1.Anbzhagan
2.The Divisional Manager,
M/s.National Insurance Company Limited,
No.110, 2nd Floor,
Jawaharlal Nehru Street,
Puducherry.

...Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the M.V.Act, 1988, against the Judgment and Decree dated 24.08.2021 and made in M.C.O.P.No.52 of 2018 (on the file of Motor Accidents Claims Tribunal, Principal Sub Court, Tindivanam).

For Appellant	: Mr.V.Udaya Kumar
For R1	: No appearance
For R2	: Mr.J.Michael Visuvasam

JUDGMENT

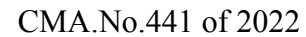
The claimant herein was a victim of a road accident in which he has suffered grievous injuries to his left tibia. The accident had taken place



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on 07.09.2014 at about 09.00 a.m., while the claimant was riding as a pillion rider of his own bike bearing Regn.No. PY 01 AX 9549. At the relevant time when the accident took place, a friend of the claimant (R.W.3) was riding it. According to the claimant, the accident had taken place when another motor cycle bearing Regn.No.TN 16 B 0281 belonging to the first respondent and insured with the second respondent collided with it. Soon after the accident, R.W.3 is claimed to have admitted the claimant at Jipmer Medical College Hospital. On the following day, on 08.09.2014, he was removed to MIOT International Hospital. It is in this setting, the appellant had laid the claim petition claiming a compensation of Rs. 6,00,000/-. The claim was resisted by the Insurance Company, which contended the non-involvement of the motor cycle of the first respondent in the accident.

2.The matter went to trial before the Tribunal and the core question before the Tribunal was how the accident had taken place and in particular, whether the motor cycle belonging to the first respondent was involved in it. The Tribunal rejected the case of the claimant outright and dismissed the claim petition. This is now under challenge.



- a) Ext.P.1, FIR was registered some 12 days after the accident had taken place and that too at the instance of PW2, who is none other than the brother of the claimant;
- b) RW3, Admittedly has taken the claimant to the Jipmer Medical College Hospital soon after the accident and in the medical examination report, it is indicated that RW3 had brought the patient to the hospital. As to the cause of action, the said report indicated 'skid and fall' from a bike of which the patient was a pillion rider. This report is marked as Ext.P.3, and its contents are not controverted. Again when the patient was shifted to MIOT Hospital, it prepared an accident report (Ext.P4) as per which the



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patient had fallen on his own from the two wheeler.

- c) It is in this background, R.W.3 was examined on summons by the Insurance Company. In his cross-examination, he had admitted that on receipt of summons, he had contacted the claimant and discussed with him as to how he needed to answer, and when R.W.3 was confronted with Ext.P3, medical report of the Jipmer Medical College Hospital, his answers were evasive.

5.Rival submissions are carefully weighed and appreciated. This Court also perused the award of the Tribunal. This Court finds that the approach of the Tribunal cannot be faulted, since the materials placed before the Tribunal are loaded very heavily against the claimant. The earliest document is Ext.P3, wherein it was recorded that the claimant has suffered injury due to skid and fall from the motor cycle. This line of the accident was maintained till the next day when the claimant was removed to MIOT hospital. In the context of Exts.P3 and P4, the burden is entirely on the claimant to establish the involvement of another motor cycle belonging to the first respondent. In this connection, the testimony of RW3 causes further dent in the case of the claimant. Set in the context,



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if Ext.P1, FIR considered, it was registered some 12 days after the accident, and curiously not at the instance of R.W.3, but at the instance of brother of the claimant. This brother of the claimant(examined as PW2) admittedly was not even in the scene of occurrence and it is not adequately known from where he got all the information about the involvement of the vehicle of the first respondent. Here, P.W.1 in his cross-examination states that he does not remember the registration number of the alleged offending vehicle belonging to the first respondent.

6.The appreciation of the above material preponderates a probability that the accident could not have taken place in the manner explained. It is true that the claimant has suffered an injury and has incurred more than Rs.4,00,000/- towards medical expenses. He may also have acquired permanent inconvenience to his mobility. Surely, he is entitled to sympathy of this Court but, vis-a-vis the compensation he claims, this Court may have to say a firm No to him. The case as put forward by the claimant and the manner in which he has attempted to prove it falls short of minimum standard of proof this Court requires to appreciate the claim.



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7.This Court does not find any merit in this Civil Miscellaneous Appeal and accordingly, it is dismissed. No costs.

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Tsg



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To

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- 1.The Motor Accidents Claims Tribunal,
Principal Sub Court, Tindivanam
- 2.The Section Officer,
V.R.Section, High Court, Madras.



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N.SESHASAYEE, J.,

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