



C.M.A.No.1689 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.10.2023

CORAM

THE HONOURABLE MR.JUSTICE **M.DHANDAPANI**

C.M.A.No.1689 of 2017

and

CMP.No.9088 of 2017

The Divisional Manager,
TATA AIG General Insurance Co. Ltd.,
Coimbatore – 18.

...Appellant

Vs.

1. N.S.Palaniappan
2. P.Karthick

...Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 as against the decree and Judgment dated 02.01.2017 made in M.C.O.P.No.261 of 2013 on the file of the Motor Accident Claims Tribunal (Court of Chief Judicial Magistrate) Namakkal.

For Appellant : Mr.K.Vinod

For Respondents : Mr.Ma.Pa.Thangavel, for R1
: R2 – Exparte
vide order dated 22.06.2017



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JUDGEMENT

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Challenging the Judgment and decree dated 02.01.2017 made in M.C.O.P.No.261 of 2013 on the file of the Motor Accident Claims Tribunal (Court of Chief Judicial Magistrate) Namakkal, the insurer is before this Court.

2. It is the case of the appellant that, the 1st respondent/claimant filed a claim petition alleging that, on 24.03.2013 at about 4.30 p.m., when the claimant was driving the motor cycle bearing Regn.No.TN-028-M-9741, the vehicle bearing Regn. No.TN-28-AU-7479, coming from the opposite direction, driven by its driver in a rash and negligent manner, dashed against the vehicle driven by the claimant as a result of which, the claimant suffered grievous injuries. A complaint regarding the said accident was lodged in Crime No.144/2013 for the offence u/s 279 and 337 IPC against the 2nd respondent. As the vehicle driven by the 2nd respondent was insured with the appellant/ insurance company, the claimant filed the claim petition before the Tribunal claiming compensation of Rs.11,00,000/- for the injuries suffered by him in the accident. After contest, the Tribunal, vide impugned judgment awarded a compensation of Rs.6,66,500/-. Aggrieved by the said order, the appellant has

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preferred this appeal questioning the liability of the insurer.

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3. Learned counsel appearing for the appellant/insurance company submits that initially a complaint was lodged before the law enforcing agency against the complainant, which, after investigation, was concluded that it was only the rash and negligent driving by the claimant, which had caused the accident and that it was not the fault of the 2nd respondent. However, after filing the claim petition, the claimant, to suit his purposes for the claim, had sought to prefer another complaint, which is impermissible, as for the very same incident, a second FIR is impermissible. However, without appreciating the above, the Tribunal has allowed the claim petition, which is perverse. It is the further submission of the learned counsel that Tribunal failed to appreciate Exs.R-3 and R-4, the rough sketch series, which clearly establishes that the claimant had come in the wrong side and, therefore, he is the offender on whom negligence has to be fastened, however, the Tribunal has ignored the said documents and had fastened the negligence on the 2nd respondent, which is wholly erroneous. Further, it is submitted that the liability cast on the insurer to pay the compensation and, thereafter, to recover the same from the 2nd respondent, is



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also assailed on the ground that when the negligence is totally on the claimant, there arises no necessity for the appellant/insurance company to pay the amount and, thereafter, recover the same.

4. Per contra, learned counsel appearing for the 1st respondent/claimant submits that, the Tribunal has properly appreciated the materials and held that the accident had happened due to the rash and negligent driving by the 2nd respondent, more particularly by rendering a finding that the 2nd respondent was not possessed of a valid driving licence. It is the further submission of the learned counsel that the delay in the registration of the FIR on behalf of the claimant had been clearly reasoned out and a finding has been rendered. Further, considering the nature of injuries suffered and the hospitalisation of the claimant, the Tribunal has awarded just and reasonable compensation, which does not require interference. Accordingly, he prayed for dismissal of this Appeal.

5. This Court gave its anxious consideration to the submissions advanced



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

6. The accident is not in dispute. The vehicles involved in the accident is not in dispute. Initially upon the accident, no complaint was lodged on the date of incident, but it was lodged after a period of three days by the 2nd respondent in which the investigating agency had investigated and filed a report by showing the 1st respondent/claimant as the person, who had driven the vehicle in a rash and negligent manner. However, the claimant, upon sustaining grievous injuries, was under hospitalisation since 24.3.2013 to 20.05.2013 and upon discharge, had given the complaint on 21.5.2013. The delay, according to the appellant/insurance company is fatal and, therefore, it is only an after thought for the purpose of claiming compensation.

7. Necessarily, on the above issue, this Court needs to deliberate as to whether the complaint given by the claimant could be adjudged to be an afterthought.

8. A careful perusal of the award reveals that the Tribunal has



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exhaustively considered the complaints, both registered at the instance of the claimant and also the 2nd respondent and had held that the complaint at the instance of the claimant cannot be said to be an afterthought. To come to the aforesaid finding, the Tribunal has relied upon the hospitalisation of the claimant from 24.3.2013 to 20.5.2013 during which time the claimant could not have given the complaint. Reasoning above, the Tribunal held that the delay in the lodging of the complaint cannot be held to be fatal to the case of the claimant.

9. In this backdrop, the Tribunal has gone into the complaint of the 2nd respondent, which has been lodged after three days of the occurrence. Though the 2nd respondent had sustained only superficial injuries for which he had taken treatment as an out-patient, the 2nd respondent had thought it fit to lodge the complaint only after three days implicating the claimant as the aggressor. Further, no reason has been given in the said complaint with regard to the non-filing of the complaint at the earliest point of time.

10. Analysing the reasons given by the Tribunal to come to the conclusion



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that the complaint given by the claimant is not an afterthought, this Court is of the considered view that it is not a question of whether the complaint given by the claimant is an afterthought or not, the moot question whether a second FIR is maintainable when the first FIR at the instance of the 2nd respondent has been investigated and charge sheet has been filed.

11. It is to be pointed out that the proper course for the claimant, upon coming to know that a complaint had been given by the 2nd respondent with regard to the accident is to challenge the FIR in the manner known to law. Though investigation was taken up and charge sheet has been filed, yet without challenging the charge sheet, the claimant has filed a fresh private complaint, upon which investigation was taken up and it was referred to as a mistake of fact. It is to be pointed out that once the complaint given by the claimant had been acted upon and investigation taken up and concluded that it is a mistake of fact, the prudent course for the claimant is to have challenged the reference of the complaint as a mistake of fact, however, the claimant, merely giving the complaint, inspite of it being referred to as a mistake of fact, has kept silent and not challenged the same in the manner known to law. In essence, neither the



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first complaint leading to the filing of the charge sheet nor the second complaint, which has been referred to as a mistake of fact have been challenged by the claimant. However, without challenging the same, the claimant has rushed to the Tribunal by filing the claim petition.

12. The Tribunal got carried away by the fact that there exists a delay in filing the complaint by the 2nd respondent and also the 2nd respondent being ex parte without making an appearance before the Tribunal, but reasoned the delay on the part of the claimant that he was hospitalised at the particular point of time. Nevertheless, the accident had happened in broad daylight and in a busy traffic prone zone. Definitely it would have been witnessed by many persons, but none of them have gone on to give a complaint. In fact, the relatives of the claimant have also not gone on to give a complaint. May be, the necessity of a complaint had dawned on the 2nd respondent after a lapse of two days and he had rushed and given a complaint, but curiously, he has not implicated the claimant as the aggressor. Nevertheless, investigation was taken up and it had led to the filing of the charge sheet. Once the criminal machinery has been set in motion, necessarily, a counter complaint is not the way to address the issue, but



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it has to be challenged. Though the Tribunal is not guided by the order in the criminal case, but definitely the findings rendered therein would necessarily have an impact and the Tribunal cannot give a contra finding. However, the basic element of law has been omitted to be considered by the Tribunal and the Tribunal has gone on to give a finding that the 2nd respondent has necessarily driven the vehicle in a rash and negligent manner merely on the ground that the 2nd respondent was not possessed of a valid driving licence. But curiously, the Tribunal has failed to consider Ex.R-3 and R-4 series, rough sketch, which also sheds some light in the manner in which the accident is said to have taken place, in which finger is pointed out on the claimant, as he is alleged to have driven the vehicle on the wrong side. Without the said aspect being considered, fastening the liability on the 2nd respondent and making the insurer pay the compensation on behalf of the 2nd respondent is wholly erroneous and perverse and, therefore, the same requires to be set aside.

13. For the reasons aforesaid, this Civil miscellaneous appeal stands allowed and the award dated 02.01.2017 passed by the tribunal in MCOP.No.261 of 2013 is set aside. The appellant/insurance company is



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permitted to withdraw the amount deposited to the credit of MCOP.No.261 of 2013 by filing appropriate application before the Tribunal. However, liberty is granted to the 1st respondent/claimant to work out his remedies in the manner known to law. No costs. Consequently, the connected Miscellaneous petition is closed.

12.10.2023

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Index : Yes/No
Speaking order : Yes/No
NCC : Yes/No

To

1. The Motor Accident Claims Tribunal (Court of Chief Judicial Magistrate), Namakkal.
2. The Section Officer, V.R.Section, High Court, Madras.

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M.DHANDAPANI, J.

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