



WEB COPY



C.M.A.No.3616 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.12.2023

CORAM:

THE HON'BLE MR.JUSTICE **M.DHANDAPANI**

C.M.A.No.3616 of 2019

and

CMP.No.20847 of 2019

The Divisional Manager,
National Insurance Co. Ltd.,
Pondicherry

...Appellant

Vs.

1. Vellikannu
2. S.Sivaraman
3. The Divisional Manager,
United India Insurance Company Ltd.,
Pondicherry.

...Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, as against the decree and judgment passed in MACTOP.No.517 of 2006 dated 23.09.2013 on the file of the Motor Accident Claims Tribunal, 2nd Additional District Judge Court, Pondicherry.

For Appellant : Ms.N.B.Surekha

For Respondents : Mr.P.Sankaranarayanan, for R2
: No Appearance, for R1 & R3



C.M.A.No.3616 of 2019

JUDGMENT

WEB COPY This Civil Miscellaneous Appeal has been filed challenging the decree and judgment passed in MACTOP.No.517 of 2006 dated 23.09.2013 on the file of the Motor Accident Claims Tribunal, 2nd Additional District Judge Court, Pondicherry.

2. The case of the appellant is that, the 1st respondent filed a claim petition claiming a compensation of Rs.4,81,000/- on the ground that, on 26.12.2005, when the 1st respondent was riding his Hero Honda Passion motorcycle bearing Regn.No.PY-01-Z-9424 along with one Danasekar as pillion rider, the appellant insured Bajaj CT motorcycle bearing Regn.No. PY-01-X-4374 owned by the 2nd respondent, driven by its driver in a rash and negligent manner came in the opposite direction and dashed against the motorcycle in which the claimant was travelling, as a result of which, the 1st respondent sustained grievous injuries and got admitted in the hospital. Thereby, the 1st respondent filed a claim petition claiming compensation at the hands of the appellant and the 2nd respondent for the injuries and loss of income sustained by him. After contest, the tribunal, vide impugned



C.M.A.No.3616 of 2019

judgment awarded a compensation of Rs.89,000/-. Aggrieved with the said order, the appellant has come up with this appeal.

3. Learned counsel for the appellant submitted that, the above said accident happened solely due to the rash and negligent driving of the 1st respondent and the same is evident from the Ex.P1, FIR filed as against the 1st respondent. While so, though the First Information Report clearly states that the said accident had occurred purely due to the negligence on the part of the claimant who drove the vehicle in a rash and negligent manner which was the cause for the accident for which, the criminal case has been registered against the claimant, the Tribunal without properly appreciating the evidence, has fastened the negligence against the appellant which is wholly unsustainable. Accordingly, she prayed for allowing the appeal.

4. On the above said contentions, heard learned counsel appearing for the 2nd respondent and perused the material documents placed on record.

5. Though notice was served on the 1st and 3rd respondent and their names were printed in the cause list, however, none appeared on their behalf. Considering the period of pendency of this appeal, this Court is



C.M.A.No.3616 of 2019

inclined to dispose of the same based on the materials available on record.

WEB COPY

6. The main contention of the learned counsel for the appellant relates to the fact that the FIR which has been marked as Ex.P1, filed against the claimant has not been properly considered by the tribunal. It has been the consistent ratio laid down by the Courts that the FIR is not a substantive document and it has to be substantiated by acceptable positive legal evidence and whatever is spoken in the FIR need not be taken at its face value and when the 1st respondent/claimant examined himself as P.W.1 and clearly deposed the manner in which the accident had happened and had stated that the accident had happened solely due to the rash and negligent driving of the driver of the appellant insured vehicle and when the deposition of the claimant before the Court is contra to the FIR, the deposition would survive over and above the FIR.

7. Further, it has been the consistent view of the Courts that FIR may not and need not contain all the details and it is settled law that FIR is not a conclusive proof nor is an encyclopedia for deciding the case. The FIR is only to set the criminal law in motion and no further. Merely because certain



C.M.A.No.3616 of 2019

information is not mentioned or wrongly mentioned in the FIR cannot be a ground to doubt the statement of eye witnesses to the occurrence, when the said statements are found to be trustworthy. (*See Rohtash – Vs – State of Rajasthan (2006 (12) SCC 64 and Ranjit Singh & Ors. – Vs – State of Madhya Pradesh (JT 2010 (12) SC 167)*). The view expressed in the aforesaid decision has been reiterated by the Apex Court in *State of UP – Vs – Naresh & Ors. (2011 (4) SCC 324)*.

8. Therefore, when the ocular testimony has clearly pointed the finger on the offending vehicle for rash and negligent driving, the mere fact that the FIR has been lodged against the claimant alone cannot be the basis to attribute rash and negligent driving on the claimant

9. When it is proved through cogent and convincing oral evidence in the form of P.W.1, the fact that the oral evidence is not in consonance with the FIR cannot be a reason to brush aside the oral evidence which has more evidentiary value than the documentary evidences.

10. Further, the Tribunal has passed an award based on the evidence



C.M.A.No.3616 of 2019

of P.W.1. On perusal of the impugned award, it is seen that necessary witnesses were not examined on the side of the appellant and that no contra evidence has been adduced by the Insurance Company in order to disprove the case of the claimant. In the absence of any contra evidence to the deposition of the P.W.1, the Tribunal, after considering the oral and documentary evidences, has rightly fixed the negligence on the part of the driver of the appellant insured vehicle and the said findings of the Tribunal cannot be interfered with.

11. With regard to quantum of compensation, it is the claim of the appellant that the compensation awarded by the Tribunal is highly excessive which requires reconsideration. In this regard, this Court perused the impugned award passed by the Tribunal and upon perusal of the impugned award, this Court is of the view that, by no stretch the compensation awarded in the appeal could be said to be excessive or disproportionate. Therefore, this Court is not inclined to interfere with the impugned award passed by the Tribunal.

12. For the reasons aforesaid, this Civil Miscellaneous Appeal is



C.M.A.No.3616 of 2019

dismissed and the impugned award passed in MACTOP.No.517 of 2006 dated 23.09.2013 stands confirmed. The appellant/insurance company is directed to deposit the compensation awarded by the tribunal to the credit of MACTOP.No.517 of 2006 along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and costs as awarded by the Tribunal, less, the amount, if any already deposited, within a period of four (4) weeks from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal is directed to transfer the said amount directly to the bank account of the 1st respondent through RTGS within a period of two (2) weeks thereafter. No costs. Consequently, the connected miscellaneous petition is closed.

11.12.2023

skt

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



WEB COPY



C.M.A.No.3616 of 2019

M.DHANDAPANI, J.

skt

To:

1. The Motor Accident Claims Tribunal, 2nd Additional District Judge Court, Pondicherry.
2. The Section Officer,
V.R.Section, High Court, Madras.

C.M.A.No.3616 of 2019

and

CMP.No.20847 of 2019

11.12.2023