



C.M.A.No.3305 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.11.2023

CORAM :

THE HONOURABLE MR. JUSTICE M. DHANDAPANI

C.M.A.No.3305 of 2019

M.Saravanakumar

... Appellant

Vs.

1.R.Kanagaraj

2.R.Rasan

3.Bharti Axa General Insurance Co. Ltd.,
1st Floor, The Fems Icon,
Survey No.28,
Doddanekundi,
Bangalore – 560 037.

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree dated 05.06.2017 made in M.C.O.P.No.1514 of 2013 on the file of the Forum of the Motor Accident Claims, Coimbatore, (Special Subordinate Judge) Coimbatore District.

For Appellant : Mr.C.Veeraraghavan

For Respondents : Mr.N.Manoharan [R1 & R2]
Ms.K.Poomalai [R3]



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JUDGEMENT

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Challenging the award passed by the Forum of the Motor Accident Claims, Coimbatore, (Special Subordinate Judge) Coimbatore in M.C.O.P.No.1514 of 2013 dated 05.06.2017, the claimant has preferred the present appeal.

2. As per the claim petition, on 15.06.2013 at about 14.30 hours, the claimant was riding his bike bearing Regn.No.TN-40-E-6036 with his friend from Kembanaickenpalayam towards his residence slowly and by strictly following the traffic rules from south to north. When they were riding near Kariyampalayam power house in front of Ganesh mess, at that time, the Tata ACE bearing Regn.No.TN-36-V-4407 belonging to the second respondent and insured with the third respondent, driven by the first respondent in the said road from west to east suddenly without noticing the vehicles coming in the said road and dashed against the bike, as a result of which, the claimant sustained grievous injuries. Thereafter, he filed a claim petition before the Tribunal claiming a sum of Rs.7,50,000/- as compensation for the injuries sustained by him.



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3. Before the Tribunal, the claimant examined four witnesses viz., P.W.1 to P.W.4 and marked 20 documents viz., Ex.P.1 to Ex.P.20. On the side of the respondents, they have examined three witnesses viz., R.W.1 to R.W.3 and marked 7 documents viz., Ex.R.1 to Ex.R.7. After adjudication, the Tribunal had rejected the claim petition filed by the claimant. Aggrieved by the same, the claimant is before this Court by way of this appeal.

4. The learned counsel appearing for the appellant submitted that, the law enforcing agency registered a criminal case as against the first respondent, in which the first respondent appeared before the Criminal Court and accepted his guilt by paying penalty. When such being the position, earlier statement before the hospital relied against the appellant is wholly unsustainable. Accordingly, he prays for allowing the appeal.

5. Per contra, the learned counsel appearing on behalf of the third respondent/insurance company submitted that the accident had happened on 15.06.2013, however, the FIR was registered on 17.06.2013 in Crime No.264 of 2013. Immediately after the accident, the appellant was admitted in the hospital and before the hospital authorities, he had specifically stated



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that the accident was happened by falling from his two wheeler in order avoid hitting the dog on 15.06.2013 and the same was recorded in the wound certificate/Ex.P.8 dated 15.06.2013 at 04.48 hours. Further, the appellant also made a statement before the National Insurance Co. Ltd., for which a sum of Rs.89,412/- was paid to the employer of the appellant. The said statement of appellant made before the insurance company dated 01.10.2013 was marked as Ex.R.6. The appellant is the author of the two documents, which are marked as Ex.P.8 and Ex.R.6, thereby the Tribunal had rejected the claim petition, which is wholly sustainable and the same does not require any interference. Accordingly, he prays for dismissal of the appeal.

6. Heard the learned counsel appearing for the appellant, the learned counsel appearing on behalf of the respondents 1 and 2 and the learned counsel appearing on behalf of the third respondent and also perused the materials available on record.

7. A perusal of the entire papers including the award passed by the Tribunal below would show that, the appellant had marked Ex.P.1 to Ex.P.7



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to prove that the accident had happened due to the rash and negligent driving of the first respondent, in which, it is seen that FIR has been registered against the first respondent and he admitted his guilt before the criminal court and paid the fine. In order to disprove the fact that the accident had happened due to the rash and negligent driving of the first respondent, the third respondent/insurance company relied upon two documents viz., Ex.P.8 and Ex.R.6. In Ex.P.8/wound certificate, it is mentioned that the appellant had sustained injuries by falling down from his motorcycle while avoiding a dog on 15.06.2013 at 03.00 p.m. If at all the accident had occurred by the negligent driving of the first respondent, it would have been revealed to the doctor who had first seen the injured. Ex.P.6 is the letter given by the appellant himself to the National Insurance Co. revealing the cause for the injuries sustained by him. The appellant and the pillion rider in unison submitted that, while they were going to their mill in the motorcycle around 01.45 p.m. and while nearing power house water tank, a dog suddenly crossed the road and as the vehicle ran over the dog, both fell down and sustained injuries. In view of the fact that the appellant being the author of Ex.P.8 and Ex.R.6 had given different submissions before the hospital authorities and the National Insurance Co. Ltd. and also



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the fact that the FIR has been registered on 17.06.2013, the Tribunal had held that the accident was not occurred by the rash and negligent driving of the first respondent and that the appellant sustained injuries by falling from his motorcycle while avoiding the dog. Therefore, the Tribunal had arrived at a conclusion that the vehicle belonging to the second respondent was not involved in the accident and dismissed the claim petition filed by the appellant, which cannot be said to be erroneous or perverse and therefore, the order passed by the Tribunal deserves to be sustained.

8. Accordingly, the Civil Miscellaneous Appeal is dismissed and the Judgment and Decree passed by the Forum of the Motor Accident Claims, Coimbatore, (Special Subordinate Judge) Coimbatore District in M.C.O.P.No.1514 of 2013, dated 05.06.2017 is confirmed. No costs.

16.11.2023

Index : Yes / No
Speaking order / Non-speaking order
Neutral Citation Case : Yes / No
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To

- 1.The Forum of the Motor Accident Claims, Coimbatore,
(Special Subordiante Judge), Coimbatore District.
- 2.The Section Officer,
V.R.Section,
High Court, Madras.



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M.DHANDAPANI, J.,

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