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C.M.A.No.2803 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.11.2023

C O R A M

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.No.2803 of 2019
and C.M.P.No.14378 of 2019

The Divisional Manager,
National Insurance Co.Ltd.,
Paramathi Main Road,
Namakkal

... Appellant/Respondents-II

Vs

1.M.Unnamalai

... Respondent-I/Petitioner

2.C.Rathinasabapathi

... Respondent-II/Respondent-I

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, as against the decree and Judgement dated 05.01.2018 made in M.C.O.P.No.321 of 2014 (Chief Judicial Magistrate Court), Namakkal District.

For Appellant

... M/s.J.Chandran

For Respondents

... **unclaimed-[R1]**

... No Appearance [R2]



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JUDGMENT

Aggrieved by the impugned award dated 05.01.2018 passed by the Chief Judicial Magistrate, Namakkal, the Appellant/Insurance Company has filed the present Appeal questioning the liability and the quantum of compensation fixed by the Tribunal.

2. On 24.11.2013, at about 5 pm, when the claimant was walking on the extreme left side of the road, a Hero Honda motorcycle bearing Reg.No.TN 28 AU 3262 which was driven in a rash and negligent manner dashed against the claimant thereby he sustained grievous injuries and he was taken to the Government Hospital, Namakkal for treatment. Since the claimant was not able to do the regular work after suffering the injuries, the claimant filed a claim petition before the Tribunal claiming compensation of Rs.6,00,000/- under various heads.

3. Before the Tribunal, the claimant examined himself as P.W.1,



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examined the doctor as P.W.2 and marked Ex.P-1 to Ex.P-9. On the side of the respondents, R.W.1 & R.W.2 were examined and no documents were marked.

After considering all the oral and documentary evidence, the Tribunal had awarded the compensation amount of Rs.2,20,200/- under various heads and fastened the liability against the Appellant/Insurance Company and the 2nd respondent/Owner of the vehicle. Challenging the said award, the Appellant has filed the present Appeal.

4. Learned counsel appearing for the Appellant/Insurance Company submitted that the date of accident is on 24.03.2011, however, the FIR was given only on 27.11.2013 which is after a lapse of four days. Though the FIR was initially registered against the 2nd respondent, later, after investigation, the case was referred to as mistake of fact. Learned counsel appearing for the appellant further submitted that the counter of the appellant before the Tribunal and the closure report of the investigating agency have not been properly considered by the Tribunal, while finding the appellant liable to pay the compensation, which requires interference at the hands of this Court.



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5. Notice was served on the 1st respondent returned with an endorsement “unclaimed” and notice was also served on the 2nd respondent and his name printed in the cause list, none appeared on behalf of the 2nd respondent today. Considering the pendency of the Appeal which is of the year 2019, this Court is inclined to dispose of the same based on the materials available on record.

6. The factum of the accident is not disputed by the parties and so also the liability. Therefore, this Court is not entering into the said aspect. However, the Insurance Company has challenged the liability to pay on account of the negligence fixed on the 2nd respondent.

7. The appellant challenges the finding with regard to negligence on the ground that the FIR was filed after a delay of four days, which is clearly an afterthought with an intention to get compensation from the insurance company, which has, after investigation been referred to as mistake of fact and further the claimant has not provided any evidence to show the injuries



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sustained by her, as it is only the wound certificate, which has formed the basis of the Tribunal to grant the compensation.

8. It is to be pointed out that it has been the consistent view of the Courts that FIR is may not and need not contain all the details. It is settled law that FIR is not a conclusive proof nor is an encyclopedia for deciding the case. Further FIR is not a substantive piece of evidence and it has to be substantiated by acceptable positive legal evidence. The FIR is only to set the criminal law in motion and no further. Merely because certain 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)*.



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9. Merely because the FIR has been referred to as a mistake of fact alone cannot form the basis for repudiating the claim made by the claimant. The claimant has filed documents to show the injuries suffered and this regard, the wound certificate reveals the nature of wound suffered by her. The insurance company is questioning the validity of the wound certificate on the premise that it has been procured. However, to establish that such wound was not suffered by the claimant, though assertions have been made in the counter, the insurance company has not examined the person, who had issued the wound certificate to disprove the same. Further, the credibility of the wound certificate, though put in issue, has not been established to be a procured one. Mere assertions without any evidence to prove the same cannot be the basis for the Court to hold that the FIR, which has been lodged after four days is merely an afterthought for the purpose of getting compensation from the insurance company. The insurance company, through credible and cogent evidence has to prove its case that the complaint is a fabricated complaint and so also the wound certificate. Merely on the basis of certain investigations, which are alleged to have been carried on by the insurance company, the



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Tribunal cannot be expected to take the said investigation report at its face value to render any finding in favour of the insurance company.

10. Considering the factum of the issue in the aforesaid perspective, the Tribunal has rightly assessed the issue and had fastened the liability on the insurance company, which cannot be said to be perverse, illegal or arbitrary and, therefore, the said finding with regarding to negligence fastened on the part of the 2nd respondent does not require any interference.

11. On the question of compensation, this Court perused the impugned award passed by the Tribunal whereby the Tribunal, considering the income of the claimant, had fixed the notional income at Rs.3,000/- has awarded a sum of Rs.6000/- under the head Loss of income during treatment period which cannot be said to be excessive. Further, the Tribunal has fixed the disability at 40% on the basis of the deposition of the doctor P.W.2 and has awarded a sum of Rs.1,20,000/- under the head Permanent Disability which



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cannot be interfered with. 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. Further, this Court finds that a sum of Rs.10,000/- under the head Transport to Hospital; Rs.49,200/- under the head Medical expenses and Rs.30,000/- under the head pain and suffering is just and reasonable which does not require any interference.

13. Accordingly, the Civil Miscellaneous Appeal is dismissed and the judgment and decree dated 05.01.2018 made in M.C.O.P.No.321 of 2014 is confirmed. There shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

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

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To

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



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M.DHANDAPANI, J

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