



C.M.A. No. 1281 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.11.2023

CORAM:

THE HONOURABLE MR. JUSTICE K. RAJASEKAR

C.M.A. No. 1281 of 2021

and

C.M.P.No.6565 of 2021

United India Insurance Co. Ltd.,
Branch office III, 137-D
Cherry Road,
Salem 636 001

... Appellant / 2nd Respondent

Vs.

1. R. Elangovan

... 1st Respondent / Petitioner

2. R. Valliammal

... 2nd Respondent / 1st Respondent

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and decree dated 19.06.2018 passed in M.C.O.P. No. 75 of 2018 (Old No. 46 of 2012) on the file of the Motor Accident Claims Tribunal (Subordinate Court), Omalur.

For Appellant : Mr. C. Paranthaman

For R1 & R2 : No Appearance



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C.M.A. No. 1281 of 2021

JUDGMENT

This Civil Miscellaneous appeal has been filed by the insurance company challenging the award passed in M.C.O.P. No. 75 of 2018 (Old No. 46 of 2012), dated 19.06.2018 on the file of the Motor Accident Claims Tribunal (Subordinate Court), Omalur.

2. For the sake of convenience, the parties are referred herein according to their litigative status and rank before the Tribunal.

3. This appeal has been filed by the insurance company, who is the insurer of the Public transport bus belongs to the first respondent, which has route permit to run between Salem to Mettur. The case of the claimant is that, he is a student and on 02.04.2021 at about 6:40PM, he was returning to his home situated in Semandapatti village from Omalur, as a pillion rider along with one Bharathidasan in a two wheeler bearing Registration No. TN-30-BY-9303, while he reached near Subramani Paithari Kotaai on the Tharapuram to Semandapatti road, a bus bearing Registration No. TN-30-AL-5889 belongs to the first respondent driven by its driver in rash and



negligent manner, came in the opposite direction, hit on the two wheeler and caused severe injuries to the claimant. He has also lodged a police complaint regarding the accident and filed a claim petition seeking compensation for a sum of Rs.5,00,000/- from the respondents.

4. The first respondent, who is the owner of the bus bearing Registration No.TN-30-AL-5889 has not contested the claim and remained ex-parte. The second respondent- insurance company, who is the insurer of the bus has filed a counter and contended that the accident was not happened as stated by the claimant and also the first respondent bus has been falsely implicated for the purpose of claiming compensation and prayed to dismiss the claim petition.

5. Before the Tribunal, on the side of the claimant, P.W.1 and P.W.2 were examined and Exs.P.1 to P.10 were marked and on the side of the respondent, R.W.1 to R.W.5 were examined and Exs. R.1 to R.13 were marked.

6. Based on the evidence placed on record and after analysing the



same, the Tribunal in point no.1, has held that the driver of the bus bearing Registration No.TN-30-AL-5889 has involved in the tortuous act and directed the insurance company to pay the compensation to the claimant. In point no.2, the Tribunal has quantified and granted compensation for a sum of Rs.1,73,600/- along with interest @ 7.5% per annum from the date of filing of claim petition till the date of realization.

7. Aggrieved over the award of directing the insurance company to pay the compensation, this appeal has been filed by the insurance company challenging the finding of the fact by the Tribunal that the driver of the bus bearing Registration No.TN-30-AL-5889 is responsible for the accident.

8. The learned counsel appearing for the insurance company has submitted that the first respondent was running a transport bus with route permit from Salem to Mettur and the bus regularly runs in the said route, as per time schedule. There is no necessity for the bus to deviate from its permitted route i.e., from Salem to Mettur and to enter into the sub roads of Tharapuram to Semandapatti. The learned counsel also further submitted



that based on the complaint lodged by the claimant, the police have conducted investigation and filed a final report stating that the bus bearing Registration No.TN-30-AL-5889 was not operated in the roads of the Semandapatti village and also relied on the evidence of the driver of the bus and other Officials to show that the bus was not at the particular place and particular time as claimed by the claimant.

9. The respondent/ claimant is served notice, but not come forward to contest this appeal.

10. I have considered the submissions of the appellant/insurance company and perused the materials placed on record.

11. It is the case of the claimant, who has adduced the evidence as P.W.1 that on 02.04.2012 at about 6:40PM, he travelled as a pillion rider in a two wheeler bearing Registration No.TN-30-BY-9303 along with one Bharathidasan from Omalur to his village. On that day, Public transport bus bearing Registration No.TN-30-AL-5889, which runs between Salem to Mettur, was diverted into the Semandapatti road, due to road accident which



took place between Omalur to Mecherry. While he reached near Paai Thari Kottai, on the Tharapuram to Semandapatti Road, the bus was driven by its driver in rash and negligent manner in high speed, came in the opposite direction and hit on the two wheeler, which resulted in causing severe injuries to him. The claimant has also relied on the F.I.R.- Ex.P1, which was lodged by him.

12. To counter the evidence of P.W.1, the insurance company has examined the driver of the bus - R.W.4 and he has deposed that on the date of occurrence, he was working as a driver of the route bus, which runs between Salem to Mettur and as per the permit schedule, the bus has to start from Mettur at about 6:30PM. Accordingly, he started the route from Mettur at about 6:33 PM and also stated that around 6:40 PM, the bus has reached Mettur Terminal road and as per schedule, it reaches Mecherry by 7:13 PM and to Omalur around 7:45 PM. The driver of the bus has further stated that on the said day, there was no road block or any diversion has been taken place between Mettur to Omalur, hence there is no need for the bus to enter into the Tharapuram to Semandapatti road. The driver of the bus also totally denied that the bus was involved in the accident and through



him, the time schedule of the bus was also marked as Ex.R.5. He has also stated that the police have investigated regarding the complaint lodged by the claimant and it was closed as mistake of fact. In the cross examination, it was admitted that the F.I.R. was registered against the driver of the bus and the bus was also subjected to Motor Vehicle Inspection.

13. Apart from the evidence of R.W.4, the driver of the bus, the Motor Vehicle Inspector was also examined as R.W.2 and he has also stated that he has inspected the bus and noted no damages in the bus. The R.W.5, another Motor Vehicle Inspector examined to prove the time schedule of the bus and he also stated that the bus was allowed to run only in the permissible route as per the permit granted by the Road Transport Authority.

14. The Inspector of Police, who has investigated the complaint lodged by the claimant was also examined as R.W.3, and he has stated that on his investigation, he came to know that the bus has started its trip between Mettur to Salem at about 6:33 PM on 02.04.2012 and there was no possibility for the bus to reach the place of occurrence as stated by the claimant but, this evidence was not properly appreciated by the Tribunal.



15. The Tribunal relied on the F.I.R., which supports the case of the claimant but on perusal of the same, it shows that F.I.R. was registered after two days from the date of occurrence and also the claimant has not marked any document like accident register, which came into existence immediately after the accident to corroborate his case and involvement of the first respondent bus in the accident. As far as the claim petition is concerned, it is the burden of the claimant to prove the manner of accident and also the standard of proof for the motor accident cases, preponderance of probability. Apex Court in *Anita Sharma and Ors. vs. New India Assurance Co. Ltd.*, [2021 (1) TNMAC 321 (SC)], has reiterated the above principle of burden of proof and standard of proof required to prove the negligence of the tortfeasor. In para 22, ordered as follows:

“22. Equally, we are concerned over the failure of the High Court to be cognizant of the fact that strict principles of evidence and standards of proof like in a criminal trial are inapplicable in MACT claim cases. The standard of proof in such like matters is one of preponderance of probabilities, rather than beyond reasonable doubt. One needs to be mindful that the approach and role of Courts while examining evidence in accident claim cases ought not to be to find fault with non-examination of some best eye-witnesses, as may happen in a criminal trial; but, instead should be only to analyze the material placed on record by the parties to ascertain whether the claimant's version is more likely than not true.



A somewhat similar situation arose in Dulcina Fernandes v. Joaquim Xavier Cruz MANU/SC/1028/2013 : (2013) 10 SCC 646 wherein this Court reiterated that:

7. It would hardly need a mention that the plea of negligence on the part of the first Respondent who was driving the pick-up van as set up by the claimants was required to be decided by the learned Tribunal on the touchstone of preponderance of probabilities and certainly not on the basis of proof beyond reasonable doubt. (Bimla Devi v. Himachal RTC [MANU/SC/0577/2009 : (2009) 13 SCC 530 : (2009) 5 SCC (Civ) 189 : (2010) 1 SCC (Cri.) 1101])”

16. In this case, except the F.I.R., the claimant has not adduced any other additional evidence to corroborate his case that he has sustained injuries only due to the negligence on the part of the driver of the bus bearing Registration No.TN-30-AL-5889 belonging to the first respondent. The reliance on the F.I.R. alone is not proper, since the same was registered after delay of 2 days, lodged by the claimant himself. Whereas, there is ample evidence to show that the bus, which was given permit to ply between Mettur to Salem has started its trip from Mettur only at 6:33 PM on the said day of occurrence and it is not possible for the bus to reach the place of occurrence as stated by the claimant at 6:40PM and also the evidence of Road Transport Authority shows that the bus could not be run in different time schedule and according to him, the bus was permitted to begun its trip



C.M.A. No. 1281 of 2021

from Mettur at 6:33PM and he further stated that the said bus has only one permit to run between Tharapuram to Semandapatti road. Similarly, the police have also investigated the case and they have concluded that the bus was not at the accident spot and closed the F.I.R. filed by the claimant as 'Mistake of Fact'.

17. This Court is of the view that the evidence of the respondent is more probable than the evidence adduced on the side of the claimant, hence this Court finds that the Tribunal has not properly appreciated the evidences of the respondents, which shows that the said bus was falsely implicated into the accident. Accordingly, this appeal filed by the respondent - insurance company succeeds and the award of the Tribunal is hereby liable to be set aside.

18. In the result, this Civil Miscellaneous Appeal is allowed. Consequently, connected civil miscellaneous petition stands closed. No costs.

15.11.2023

stn

Index: Yes/No

Speaking Order: Yes/No

Neutral Citation Case: Yes/No



C.M.A. No. 1281 of 2021

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To:

1. The Subordinate Judge,
Motor Accident Claims Tribunal,
Omalur.
2. The Section Officer,
V.R.Section,
High Court,
Chennai.



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C.M.A. No. 1281 of 2021

K. RAJASEKAR, J.

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C.M.A. No. 1281 of 2021

15.11.2023