



CMA(MD).No.124 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 15.03.2023

PRONOUNCED ON : 21.03.2023

CORAM

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.124 of 2019

A.Paramasivam (died)

2.Amirthavalli

... Appellant

(2nd Appellant is brought on record as
legal heir of the deceased sole appellant
vide Court order dated 07.02.2023)

VS.

1.P.Nirmalkumar

2.M/s.The New India Ass.Co.Ltd.,
Divisional Office
Zerome Building, Ft.Station Road
Trichy 620 002

...Respondents

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1998, to call for the records relating to MCOP.No. 103 of 2014 on the file of the Motor Accident Claims Tribunal, Kulithalai and set aside the decretal order and judgement passed in the



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same on 4th October 2018 and allow this Civil Miscellaneous Appeal.

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For Appellant : Mr.RM.Sivakumar

For R1 : No appearance

For R2 : Mr.D.Sivaraman

JUDGMENT

The present appeal has been filed by the claimant challenging the dismissal of his claim petition in MCOP.No.103 of 2014 on the file of the Motor Accident Claims Tribunal, Kulithalai, Karur District.

2.The injured claimant had filed a claim petition under Section 163(A) and 166 of the Motor Vehicles Act contending that on 29.12.2013 at about 4.30 p.m, when he was riding his Bajaj Motor Cycle, a Bajaj Pulsar Motor Cycle belonging to the first respondent came from the opposite direction in a rash and negligent manner and dashed against the petitioner's bike. In the said accident, the petitioner had sustained grievous injuries resulting in amputation of left leg, fracture of left elbow, grievous injuries in head, chest, right hip and multiple injuries all over the body.



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3. According to the claimant, he was originally admitted to the Government Hospital, Kulithalai, thereafter he was referred to the Government Head Quarters Hospital, Trichy. For taking expert medical treatment, the petitioner was admitted in Maruthi Hospital, Trichy, wherein he was an inpatient more than 50 days. The petitioner had claimed that only due to the rash and negligent driving of the first respondent's vehicle, the said accident had happened. The second respondent is the insurer of the first respondent and therefore, he claimed a compensation of Rs.15,00,000/-.

4. The first respondent who is the owner of the alleged offending vehicle had remained exparte and a counter was filed by the second respondent Insurance Company. The Insurance Company has raised a preliminary objection that the first respondent's vehicle was not at all involved in the accident and the petitioner had sustained injuries by falling down from his motor cycle in a drunken mood. An F.I.R registered as against the first respondent had been closed as 'Mistake of Fact'. The driver of the first respondent motor cycle was not having effective and valid driving license at the time of accident. The Insurance Company has also disputed the monthly income and the quantum of



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compensation claimed by the petitioner. The Insurance Company had further contended that the petitioner's motor cycle had no valid registration certificate and no Insurance Coverage at the time of accident.

5.After considering the oral and documentary evidence submitted on either side, the Tribunal had arrived at a finding that in the Accident Register, it has been recorded that the claimant was brought to the Hospital by the uncle of the claimant by name one Nagamuthu. It is further recorded that there was a smell of alcohol in the breath of the claimant. The said Accident Register was marked as Exhibit X7. In the said Accident Register, it has been further recorded that the claimant has fallen down by himself. Therefore, the Tribunal arrived at a finding that there was no accident as claimed by the claimant and the claimant had fallen down on his own from the motor bike in a drunken mood and he had sustained injures. The Tribunal further found that the said Nagamuthu has not been examined on the side of the claimant to the extent why such a statement was given by the said Nagamuthu to the Doctor. The Tribunal further found that 2 days after the accident, an F.I.R has been laid by another relative of the claimant in Crime No.1 of 2014 on 01.01.2014 as against the first respondent. The concerned



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Special Sub Inspector who had closed the F.I.R was examined as RW2.

A legal notice was issued by the Insurance Company to the owner of the vehicle. However, no reply was sent by the owner and the claimant has not approached the Court with clean hands and a dismissed claim petition. Challenging the same, the present appeal has been filed.

6.The learned counsel appearing for the appellant had placed strong reliance upon the Motor Inspector's Report with regard to the involvement of both the vehicles in the accident which are marked as Exhibits R1 and R2 . He had further pointed out that the vehicle belonging to the first respondent has been damaged heavily as per the report of the Motor Vehicle Inspector. This will clearly endorse the plea of the claimant that the said vehicle was involved in the accident. There cannot be any dispute that the accident had taken and the claimant got injured in the said accident. The Insurance Company has not proved the non involvement of the first respondent in the said accident. On the other hand, the claimant had established the involvement of the first respondent's vehicle in the accident by way of Exhibits R1 and R2.

7.The learned counsel for the appellant had further contended that no notice was issued by the police authorities for closure of the



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complaint as 'Mistake of Fact'. Therefore, when the claimant had established the accident, the negligence on the part of the first respondent and the injuries sustained by him, the Tribunal was in error in rejecting the claim petition.

8.Per contra, the learned counsel appearing for the respondent Insurance Company had contended that the claimant had suppressed the Accident Register which is the first document that came into existence immediately after the accident. The said accident report has been prepared based upon the information furnished by the uncle of the claimant. In the said Accident Register, it has been recorded that the claimant had fallen down on his own and sustained injuries. No offending vehicle or any accident is referred to in the said statement. The Duty Doctor had recorded that the breath of the claimant smells alcohol. Therefore, it is clear that the claimant had fallen down from his vehicle due to drunken mood.

9.The learned counsel for the respondent had further contended that 2 days after the accident, an F.I.R has been lodged by another relative of the claimant by fixing the first respondent vehicle. Even in the



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said complaint, it has been recorded that only the uncle of the claimant due to anxiety has made certain statements before the Doctor which are not correct. Therefore, it is clear that the Doctor not recorded anything which was not stated by a person who accompanied the injured claimant.

10.The learned counsel for the respondent had further contended that the first respondent belongs to the same village and the community of the claimant and there is every possibility that there is a collusion between the claimant and the first respondent herein. The first respondent had also remained exparte. The claimant has chosen to challenge the closure report of the police authorities only in order to help the first respondent who is his relative. The Tribunal was right in arriving at a finding that the claimant has not established the negligence or involvement of the first respondent vehicle. Hence, he prayed for sustaining the order passed by the Tribunal.

11.I have considered the submissions made on either side and perused the materials available on record.

12. There is no dispute that the claimant got injured in an accident that has taken place on 29.12.2013 and he sustained injuries. The only issue that requires to be considered is that whether the accident had taken



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place due to the involvement of the vehicle belonging to the first respondent or not.

13. In the claim petition, the petitioner had claimed his monthly income as Rs.25,000/- per month. Therefore, it is clear that the claim petition cannot be considered under Section 163(A) of the Motor Vehicles Act. When a claim is filed under Section 166 of the Motor Vehicles Act, the initial burden is upon the claimant to establish the involvement of the offending vehicle and the negligence on the part of the driver of the said offending vehicle.

14. The accident is said to have taken place at about 4.30 p.m on 29.12.2013. The claimant having sustained injury was immediately taken to the Government Hospital at Kulithalai by his uncle Nagamuthu at about 5.15.p.m. The duty Doctor has recorded that the claimant had fallen on his own from the two wheeler and sustained injuries and the breath of the claimant smells of alcohol. No explanation has been offered on the side of the claimant for the said statement being recorded in the Accident Register by the duty Doctor. Considering the fact that the Accident Register was the first document that came into existence immediately after the accident, the importance and the genuineness of the



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said document cannot be brushed aside.

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15. An F.I.R has been lodged 2 days after the accident by another relative of the claimant. Only in the said F.I.R, the vehicle belonging to the first respondent is referred to as an offending vehicle. An attempt has been made in the said complaint to explain the statement of the uncle of the claimant in the Accident Register. In the complaint, it has been stated that the uncle of the claimant due to anxiety has given some wrong information to the Doctor. Therefore, it is clear that the duty Doctor has properly recorded the statement of the uncle of the claimant and the Doctor cannot be blamed for recording of any wrong statement that was not made. Therefore, a serious doubt arises with regard to the involvement of the vehicle of the first respondent and the manner of accident. Though it has also been brought on record through Exhibit R1 that the offending vehicle has been damaged, the extent of damages to the offending vehicle will clearly show that the driver of the said vehicle should have been injured seriously. However, nothing is on record to show that the first respondent was injured in the said accident or he had filed any complaint or any claim petition. In the cross examination of P.W.1, it has been extracted that the first respondent belongs to the same



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village and community of the claim petitioner. Conveniently the first respondent who is the owner of the alleged offending vehicle had also remained exparte. It has also been brought on record that the petitioner is not having a driving license at the time of accident.

16.In view of the above said facts, it is clear that the claimant has not established the involvement of the vehicle belonging to the first respondent in the accident so as to maintain a claim petition as against the Insurance Company. The Tribunal has rightly arrived at a finding with regard to suspicious circumstances arising out of the claim petition. Therefore, there is no illegality or infirmity in the order of the Tribunal in dismissing the claim petition and the Civil Miscellaneous Appeal stands dismissed. No costs.

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Index : Yes/No
Internet : Yes/No
NCC : Yes/No
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To
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1. The Motor Accident Claims Tribunal, Kulithalai
2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR,J.

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Pre-delivery order made in
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