



C.M.A.(MD).No.696 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED : 03.04.2023

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.696 of 2020

The Legal Manager
Cholamandalam MS General
Insurance Company Ltd,
3rd and 4th Dindigul Highway,
Near E.N.T.Hospital, Kaalavasal,
Madurai.

.....Appellant/2nd Respondent

-VS-

1. Kannan

.... 1st Respondent/Petitioner

2. Balayogeswari

.... 2nd Respondent/ 1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree made in M.C.O.P.No.621 of 2018 on the file of the Motor Accident Claims Tribunal, (Special Subordinate Judge) Thanjavur, dated 30.09.2019.

For Appellant : Mr.K.R.Shivashankari
For Respondents : No appearance

J U D G M E N T

The present Civil Miscellaneous Appeal has been filed by the Insurance Company challenging the award passed by the Motor Accident Claims



C.M.A.(MD).No.696 of 2020

WEB COPY

Tribunal, Thanjavur in M.C.O.P.No.621 of 2018 primarily on the ground of non-involvement of the insured vehicle in the alleged accident.

2. The injured claimant had contended that he was driving a two wheeler on 26.03.2018 at about 9.30 a.m. While he was driving the vehicle in Ennambur main road, Mahindra van came from the opposite direction and dashed against the two wheeler and in the said accident he sustained grievous injuries. The claimant had prayed for a sum of Rs.9,00,000/- (Rupees Nine Lakhs only) as compensation.

3. The owner of the said Mahendra Van had remained ex-parte. The Insurance Company has filed a counter contending that the said vehicle was not at all involved in the accident. They have further raised the doubt in view of the fact that an FIR was lodged 10 days later from the date of accident by the wife of the injured claimant. In the counter they have also contended that the Motor Vehicle Inspector's Report has not been filed relating to the accident.

4. The Tribunal, after considering the oral and documentary evidence came to the conclusion that the owner of the vehicle has remained ex-parte



C.M.A.(MD).No.696 of 2020

and he had not disputed the manner of accident. The Tribunal further found that the oral evidence of the injured claimant was not shaken by his cross examination. The Tribunal further found that the company has not let in any contra evidence to establish that the vehicle was not involved in the said accident. Based upon the said findings, the Tribunal concluded that the vehicle of the first respondent was involved in the said accident. Thereafter, the Tribunal proceeded to fix the quantum of compensation at Rs.77,000/- (Rupees Seventy Seven Thousand only). This award is under challenge in the present appeal.

5. The learned counsel appearing for the appellant /Insurance Company primarily contended that the vehicle viz., Mahendra Milk Van was not at all involved in the said accident and it was put up as an after thought. The learned counsel appearing for the appellant further contended that the Investigator filed investigation report to the effect that another two wheeler was involved in the said accident. As per Accident Register Report given by the injured claimant and his aunt. That apart, though the injured claimant was admitted in the Government Hospital, Kumbakonam, no FIR has been registered at the relevant point of time and only after a period of 10 days, the wife of the injured claimant had lodged the complaint before the police to the



C.M.A.(MD).No.696 of 2020

effect that the first respondent's vehicle was involved in the said accident.

Therefore, it is clear that the first respondent vehicle was put up as an after thought when another two wheeler was involved in the accident. Hence, he prayed for allowing the appeal.

6. Though notice has been served, the injured claimant has neither chosen to appear in person or through his counsel.

7. The accident has taken place at about 9.30 a.m., on 26.03.2018. The Ex.R1 is the Investigation Report. In the said Investigation Report, the Accident Register issued by the Government Hospital, Kumbakonam has been enclosed. As per the said Accident Register, the information relating to the accident was furnished by the aunt who was the pillion rider of the said two wheeler. As per the version of the pillion rider the accident has happened because of the involvement of unknown two wheeler. The injured claimant was examined as P.W.1 who categorically admitted in his cross examination that he was not aware of the nature of the vehicle that dashed against the two wheeler. He came to know that it was Mahindra Milk Van on a later point of time. In fact he disputes that his aunt never informed the hospital



C.M.A.(MD).No.696 of 2020

authorities about the involvement of the two wheeler which is in contradiction with the Accident Register maintained by the Government Hospital.

8. The accident has taken place on 26.03.2018, but FIR has been lodged on 02.04.2018 after a period of six days. The said FIR has been lodged by the wife of the injured claimant alleging that the vehicle belonging to the first respondent was involved in the said accident. Though the injured claimant was admitted in the Government Hospital, Kumbakonam, immediately after the accident, it is not known why the same was not immediately informed to the respondent police for registration of an FIR. The registration of FIR after a period of 6 days has created doubts relating to the involvement of the vehicle.

9. The Accident Register which was registered within one hour and 15 minutes from the time of accident clearly shows that the offending vehicle was only a two wheeler and not a Mahindra Milk Van. Therefore, it is clear that the Insurance Company have established that the first respondent's vehicle is not at all involved in the said accident. It is not difficult to identify a two wheeler from a van therefore, there is no question of confusion between



C.M.A.(MD).No.696 of 2020

WEB COPY

a van and a two wheeler. Therefore, the Tribunal was not right in holding that the oral evidence of the injured claimant was not controverted or the Insurance Company has not let in any contra evidence to the said fact. In fact, the Insurance Company has placed the Accident Register as Ex.R2 to establish that at the first instance the involvement of the two wheeler alone was informed by the injured claimant and his aunt. Therefore, the Insurance Company has established the non-involvement of the vehicle belonging to the first respondent. The Tribunal has erroneously fixed the liability on the first respondent and consequentially liability upon the appellant Insurance Company.

10. In view of the above said deliberations, the award in M.C.O.P.No. 621 of 2018 is set aside this Civil Miscellaneous Appeal stands allowed the award amount if any deposited by the Insurance Company shall be refunded along with accrued interest. There shall be no order as to costs.

03.04.2023

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
ebsi



WEB COPY



C.M.A.(MD).No.696 of 2020

To

1. The the Motor Accident Claims Tribunal,
(Special Subordinate Judge),
Thanjavur,
2. The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



C.M.A.(MD).No.696 of 2020

R.VIJAYAKUMAR,J.

ebsi

C.M.A.(MD)No.696 of 2020

03.04.2023