



C.M.A.(MD).No.1159 of 2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 23.03.2023

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.1159 of 2016

The National Insurance Company Ltd.,
Through its Divisional Manager,
No.3, North Veli Street,
Madurai – 625 001.

..... Appellant/ Respondent No.4

-vs-

1. A.Rahoop Khan (died)
2. A.Ramasamy
3. K.S.Sivakumar

.... Respondent No.1/Petitioner
.... Respondent No.2/ Respondent No.1
.... Respondent No.3/ Respondent No.2

4. The Divisional Manager
New India Assurance Company Ltd.,
248 B, Kamarajar Salai,
Madurai.

... Respondent No.4/ Respondent No.3

5. Tajnisha Begam
6. Arsath Mohamed
7. Mahathir Mohamed Aazath
8. Aabitha Begam

.... Respondents

(Minor R6 and R7 are represented through
Mother Tajnisha Begam)

(Respondents 5 to 8 are brought on record as
Legal heirs of the deceased R1 vide order of this
Court dated 15.02.2021 in C.M.P(MD) Nos.2197 to 2199/2019
in C.M.A(MD) No.1159 of 2016)



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PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree in M.C.O.P.No.1472 of 2014, dated 15.10.2015, on the file of the Special Sub Court, (Motor Accidents Claims Tribunal), Madurai.

For Appellant : Mr.D.Sivaraman

For Respondents : No appearance – For R2 and R3
: Mr.J.S.Murali – for R4

: Mr.S.M.Mohan Gandhi
For R5 to R8

J U D G M E N T

The present Civil Miscellaneous Appeal has been filed by the Insurance Company challenging the Award of the Motor Accidents Claims Tribunal primarily on the ground that the vehicle insured with them was not involved in the accident.

2. The injured claimant was a pillion rider in TVS XL and according to the claimant, he was dashed against by a Yamaha Bike which is owned by the first respondent and insured with the fourth respondent. The claimant had



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contended that the accident had happened only due to a rash and negligent driving of the vehicle belonging to the first respondent.

3. The fourth respondent Insurance Company had filed a counter disputing the involvement of the vehicle and contending that an FIR was registered belatedly, on 10.11.2008. They have further contended that the first respondent had lodged a complaint before the police under Ex.R4, contending that the vehicle was not at all involved in the said accident.

4. The Tribunal, after considering the oral and documentary evidence, arrived at a finding that the vehicle belonging to the first respondent was involved in the accident and the said accident has happened only due to the rash and negligent driving of the driver of the first respondent vehicle. The Tribunal further found that the injured claimant was entitled to compensation of a sum of Rs.2,10,000/- (Rupees Two Lakhs and Ten Thousand only) on the ground that he has suffered the permanent partial disability at 30%. This Award is under challenge in the present appeal.



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5. The learned counsel appearing for the appellant/Insurance Company had contended that the alleged accident is said to have taken place at about 06.30 p.m, on 09.11.2008. However, the FIR has been registered only on the next day. He further pointed out that neither of the vehicles involved in the accident have been referred to the Motor Vehicle Inspector for submitting a report. Unless the Motor Vehicle Inspector's Report is placed before the Court, the damages incurred to the vehicle could not be assessed so as to point out the involvement of the vehicle. He further contended that the owner of the offending vehicle is arrayed as the first respondent, he was examined as RW-2. As per the deposition, the vehicle was not at all involved in the said accident. He further contended that except the injured witness no other eyewitness have been examined to prove the accident or to prove the involvement of the offending vehicle in the said accident. Therefore, he prayed for exonerating the fourth respondent/Appellant Insurance Company from the liability.

6. Per contra, the learned counsel appearing for the claimant had contended that the accident had taken place at about 06.30 p.m, on



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09.11.2008 and immediately, the injured claimant was admitted to the Sree Kumaran Hospital near new bus stand, Tiruppur and thereafter, he was discharged only on 14.11.2008. The FIR was registered as per the instructions sent to the Police who reached the hospital only after receiving instructions from the said hospital. Therefore, any delay in registration of FIR cannot be attributed in the injured claimant and for the said ground, the involvement of the vehicle cannot be doubted.

7. The learned counsel appearing for the respondent further contended that even at the time of registration of the FIR, the vehicle number belonging to the first respondent has been mentioned. He further contended that though the owner of the offending vehicle is arrayed as the first respondent and he was examined as RW.2, the evidence cannot be taken in to consideration in view of the fact that though he was a party arrayed as the first respondent in the claim petition, but he has not chosen to file a counter. Therefore, he prayed for sustaining the award passed by the Tribunal as against the appellant Insurance Company.



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8. I have carefully considered the submissions made by the learned counsel on either side and perused the material on records.

9. The present appeal has been filed primarily on the allegation that the offending vehicle is not at all involved in the said accident. According to the claimant, the accident had taken place at about 06.30 p.m, on 09.11.2008. Ex.P2 is the discharge summary issued by Sree Kumaran Hospital. It is clearly established that the injured claimant was admitted to the said hospital on 09.11.2008 alleging that the accident has taken place at around 06.30 p.m. Even in the said discharge summary, it has been referred to another two wheeler which was involved in the said accident. The injured claimant was discharged only on 14.11.2008. A perusal of the FIR indicates that the said FIR has been registered at about 02.45 hours on 10.11.2008. The type of information in cloumn No.4 has been mentioned as oral information. Even in the said FIR, the Head Constable has recorded that he had received information from Thiruppur, Sri Kumaran Hospital and thereafter, he has visited the hospital and recorded the statement of the injured claimant and he has registered the FIR.



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10. A combined reading of the discharge summary under Ex.P.2 and the Ex.P.1- FIR clearly establishes that the offending vehicle belonging to the first respondent and insured with the second respondent was involved in the accident and it has been referred to in the FIR which was registered at the earliest point of time. Therefore, this Court does not find any illegality or infirmity in the award of the Tribunal in fixing the involvement of the vehicle.

11. As far as the plea of the negligence on the part of the injured claimant is concerned he was only a pillion rider in the TVS-XL and though the driver of the offending vehicle has been examined as R.W.2, nothing has been brought forward. The entire case was about the non-involvement of the vehicle and he has not come forward to depose anything about the negligence of the vehicle, in which the injured claimant had travelled. Therefore, there cannot be any illegality on the part of the Tribunal in arriving at a conclusion the accident has happened due to the rash and negligent driving on the part of the offending vehicle owned by the first respondent herein.



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12. As far as the quantum of compensation is concerned, the injured claimant is a Tailor and his monthly income is Rs.8,000/- (Rupees Eight Thousand only). The Tribunal has taken the monthly income at Rs.3,000/- (Rupees Three Thousand only) and has proceeded to grant a total compensation of Rs.2,10,000/- (Rupees Two Lakhs and Ten Thousand only) under the different heads. Therefore, considering the fact that the grant of compensation is very reasonable, this Court is not inclined to interfere with the quantum of compensation. Therefore, there is no merit in the appeal, and this Civil Miscellaneous Appeal is dismissed.

13. During the pendency of the appeal, the injured claimant has passed away. Therefore, the legal heirs of the injured claimant have been impleaded as respondents 5 to 8. Respondent No.5, who is the wife of the deceased claimant shall be entitled to a sum of Rs.1,00,000/- (Rupees One Lakh only) Respondents 6 and 7 would be equally entitled to a sum of Rs.50,000/- (Rupees Fifty Thousand only) each. Respondent No.8 would be entitled to a sum of Rs.10,000/- (Rupees Ten Thousand only). The claim shall be apportioned in the above said manner along with accrued interest and the same shall be disbursed to the adult claimants. In respect of the minor



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claimants 6 and 7, the amount shall be deposited in a Nationalized Bank till they attain majority and the guardian of the minor claimant is permitted to withdraw the interest once in three months. There shall be no order as to costs.

23.03.2023

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
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To

1. The Special Sub Court,
(Motor Accidents Claims Tribunal),
Madurai.
2. The Divisional Manager
New India Assurance Company Ltd.,
248 B, Kamarajar Salai,
Madurai.
3. The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR,J.

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