



C.M.A(MD)No.1045 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on : 19.10.2023

Delivered on: 19.12.2023

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

AND

THE HONOURABLE MR.JUSTICE P.B.BALAJI

C.M.A(MD)No.1045 of 2023

Manikandan

... Appellant/Petitioner

Vs.

1.T.Nagarajan

2.The Branch Manager,

The National Insurance Company Limited,

Anguvilai Building,

North Car Street,

Nagercoil,

Agasteeswaram Taluk,

Kanyakumari District.

... Respondents/Respondents

Prayer:- Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, 1988, against the fair and decreetal order passed in M.C.O.P.No.22 of 2012, dated 27.11.2015 on the file of the Motor Accident Claim Tribunal and learned Chief Judicial Magistrate, Nagercoil and praying to set aside the same.



C.M.A(MD)No.1045 of 2023

For Appellant : Mr.K.Vamanan
For R2 : Mr.V.Sakthivel
For R1 : No appearance

JUDGMENT

RMT.TEEKAA RAMAN,J.,

The claim petitioner is the appellant herein.

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

3. The appellant has filed a claim petition in M.C.O.P.No.22 of 2012 claiming compensation of Rs.50,00,000/- for the injuries said to have been sustained by him in the road transport accident on 14.08.2010. The Insurance company / second respondent filed counter statement alleging that the vehicle was not involved in the accident and as per the claim form submitted by the owner of the vehicle, namely, the first respondent, the accident has taken place only on 18.08.2010. After trial, the claim petition was dismissed. Hence, the claimant has filed the above appeal.



C.M.A(MD)No.1045 of 2023

WEB COPY

4. The learned counsel for the appellant submitted that the accident took place on 14.08.2010 while the petitioner travelled as pillion rider and the first respondent was driving his two wheeler bearing registration No.TN-74-R-1087 and met with accident. In this accident, the first respondent also sustained injury as well as the two wheeler got damaged and on 31.08.2010 the first respondent produced the said two wheeler for service and claimed the repair cost for the damages caused to the vehicle from the second respondent insurance company. In the claim form, the first respondent stated that on 18.08.2010 an accident had happened and the vehicle was damaged. The respondents totally suppressed the accident dated 14.08.2010 to escape from the criminal and civil legal liabilities. The damage caused to the two wheeler bearing registration No.TN-74-R-1087 owned by the first respondent is only on 14.08.2010 and because of the said accident only the appellant sustained the injuries. Therefore, the first and second respondents herein are liable to pay the compensation to the appellant jointly and severally.

5. The learned counsel for the second respondent / Insurance Company made a submission in support of the judgment of the tribunal.



C.M.A(MD)No.1045 of 2023

WEB COPY

6. After hearing the rival submissions and after perusing the documentary evidence the point for considerations are:

(i) whether the accident has taken place on 14.08.2010 as pleaded by the claim petitioner or the accident has taken place on 18.08.2010 as projected by the respondents: and

(ii) whether accident has taken place due to the rash and negligent driving on the part of the driver of the vehicle insured with the second respondent: and

(iii) what is the compensation, if any, to be paid.

7. During trial, the claim petitioner / injured himself was examined as P.W.1 and P.W.2 to P.W.5 were also examined and marked Ex.P1 to Ex.P36 were marked. On behalf of the respondents, R.W.1 and R.W.2 were examined and Ex.R1 to Ex.R12 were marked and Ex.X1 and Ex.X2 were marked namely the police station records.

8. The claim petitioner both in his pleadings as well as in his evidence as P.W.1 would state that on 14.08.2010, while he was travelling as pillion rider with the first respondent in the Hero Honda Splendor, bearing



C.M.A(MD)No.1045 of 2023

registration No.TN-74-R-1087, due to rash and negligent driving of the first respondent, who lost control, the vehicle dashed against the side Wall of the Bridge in which, the petitioner got fracture on the Spinal cord and sustained multiple injuries and had taken treatment and subsequently, filed a case for compensation.

9(a). The insurance company refuting the allegations of the claim petitioner both in the counter statement as well as the evidence of R.W.2 that on 31.08.2010 the first respondent has submitted a claim intimation letter stating that his vehicle TN-74-R1087 was met with an accident on 18.08.2010 at 2.00 a.m/p.m near Aralvoimozhi and sustained damages. Further he has stated in the intimation letter that the vehicle is at V.SKalyanasundaram Auto Agency for inspection and requested to arrange survey. More over the accident caused simple / fatal injuries to one person. We have not reported the accident to police station.

9(b) Further, he has stated that at the time of accident one Mr.Prabhu.G, S/o.George has driven the vehicle at the time of accident. On the basis of the intimation letter, the second respondent company issued the claim form to the first respondent. After receipt of the claim



C.M.A(MD)No.1045 of 2023

form the first respondent filled and submitted the same along with estimate for repairs and the driver statement.

9(c) In that claim form column No.2 (e) he has stated that at the time of accident only one person was traveled in the vehicle. Further in the claim form column No:2 he has stated the driver at the time of accident is one Prabhu.G, aged 24 years, residing at No.4/45A-2, Paraicode, Thiruvithancode post, Kalkulam Taluk and his driving license number is TN-74Z 200 4000 3696 and it has been issued by RTO Marthandam. Further, in the claim form column No.8 he has stated that the driver was injured and his left leg scratched. Further the said G.Prabhu has submitted a written statement stating the manner of accident.

10. On perusal of Ex.P1-FIR, we find that the narration of the accident as under:-

(a).A complaint before the Judicial Magistrate, Bhoodapandy on 31.01.2011 stating that on 14.08.2010 at about 9.20 p.m, the petitioner was traveled in a motorcycle TN-74-R-1087 as pillion rider which was rode by one T.Nagarajan. When they reached near Muppandal the first respondent



C.M.A(MD)No.1045 of 2023

rode the motorcycle in a rash and negligent manner and while given way to the on coming vehicle, he dashed against a culvert. Due to that the pillion rider Manikandan thrown away and sustained multiple injuries on the head and body. The rider Nagarajan also sustained some injuries. Further he has stated in the complaint that the hospital authorities gave intimation to the Aralvoimozhi police and the petitioner is of the impression that the police had registered a case against the first respondent. So on 30.11.2010 he has made a complaint to the Superintendent of Police, Kanyakumari District but they have not taken any action.

(b) So he has filed a complaint before the Judicial Magistrate, Bhoodapandy as CrI.M.P.No.572/2011 dated 31.01.2011. So on that day itself the Judicial Magistrate, Bhoodapandy forwarded the complaint to the Aralvoimozhi police for registering a case and investigation under Section 156(3) Cr.P.C. As per the direction of the Judicial Magistrate, Bhoodapandy the Aralvoimozhi police registered a case in Crime No. 118/2011 under Section 279 and 338 IPC against the first respondent T.Nagarajan on 14.02.2011. Further on 28.02.2011 itself the Special Sub Inspector of Police Aralvoimozhi without any proper enquiry filed the charge sheet before the Judicial Magistrate, Bhoodapandi.”



C.M.A(MD)No.1045 of 2023

WEB COPY

11. Heard both. Perused records.

12. It is a specific case of both the first respondent / owner of the vehicle and the Insurance Company / second respondent is that the vehicle owned by the first respondent met with an accident only on 18.08.2010 and the vehicle got damaged and the claim petitioner also sustained injuries and the Surveyor of the Insurance Company has inspected the damaged vehicle and also paid amount to the workshop. Ex.R1 to Ex.R7 clearly demonstrate the above stated pleadings which is marked through R.W.2 the Officer of the Insurance Company.

13. Admittedly, P.W.1 during the cross-examination would state that the accident has taken place on 14.08.2010. At the first instance, he would state that he was riding the vehicle, subsequently, he has changed the version that he was sitting as pillion rider and there was no involvement of any other vehicle in the accident and he alleged to have taken treatment as Manuel Orthopaedic Hospital, Therekalputhoor. Further, the P.W.1 has not filed any document to show that he has taken the treatment in the Manuel hospital. Though he would state that there are other peoples have witnessed the incident, the claim petitioner has not chosen to examine any



C.M.A(MD)No.1045 of 2023

independent person to support his version and he has not filed any such document to prove the same. No doubt, it is true that the evidence of injured witness is sufficient enough, however, when the date of the accident is specifically disputed by both the owner of the vehicle and the Insurance company and they also put specific defence that the injuries are not happened while he was travelling in the two wheeler belonging to the first respondent and in such circumstances, this Court is of the considered view that the non-examination of the alleged occurrence witness creates a doubt in the mind of the Court as to the veracity of the statement of P.W.1.

14. On perusal of Ex.P2, we find that the injured has admitted in the hospital on 14.08.2010 at 10.20 p.m., at Manuel hospital. However a bare perusal of Ex.P2 wound certificate would indicate that 'Medico Legal Cases'. It is also caused serious doubt as to the averments made by the claim petitioner that he had sustained injury only in the road transport accident. Yet another point is that while P.W.1 specifically deposed that the hospital authorities have also informed to the Aralvoimozhi police station by way of intimation, however, no such intimation said to have been received by the Aralvoimozhi Police Station are marked before the Court assumes significance and hence, a combined reading of the above



C.M.A(MD)No.1045 of 2023

said factual position, caused serious doubts as to the veracity of the P.W.1 in the witness box. At this juncture, the case of the first and second respondent assumes significance.

15. The second respondent in the counter has stated that, R.W.1 on 31.08.2010 has filed claim petition and in that petition, he has stated that the motor vehicle belongs to him having registration No.TN-74-R-1087 has met with an accident on 18.08.2010 at about 02.00 p.m., near Aralvoimozhi and it was damaged and in the said claim petition, he has specifically stated that one Prabu, S/o.George was rider of the vehicle. The surveyor attached to the Insurance Company has inspected the damaged vehicle and submitted his report on 29.10.2010 assessing the loss as Rs. 2,859/- and the same has been credited in the account of M/s.V.S.Kalyanasundaram Auto Agency Nagercoil. In the claim petition filed by the first respondent he has stated that the rider Prabhu and another person have sustained injuries and the name of the claim petitioner in this petition was not mentioned and R.W.1 was signed in the claim form. Ex.R3 is a letter given by Prabu, who is rider of the said two-wheeler regarding the manner of the accident and hence, this Court finds that the version of the respondents that the accident had taken place only on



C.M.A(MD)No.1045 of 2023

18.08.2010 appears to be more probably. Thus, the claim of the claim petitioner that the accident had taken place on 14.08.2010 and he had taken treatment for the said injuries, the trial Court has compared the Ex.P5 and come to the conclusion that in the said accident, it is highly improbable for the claim petitioner to have an injury.

16(a). The preponderance of probabilities is a test for evaluation of the evidence in the claim petition filed under the Motor Vehicles Act. The standard of proof requires preponderance of probability. After going through the evidence of R.W.1 and R.W.2, coupled with Ex.R1 to Ex.R7 and also the statement of the driver of the two-wheeler namely Prabhu, the Tribunal had rightly come to the conclusion that the manner of the accident as spoken by P.W.1 is unbelievable and on the contrary, based upon the oral and documentary evidence of second respondent / Insurance Company, has come to the conclusion that the accident has taken place only on 18.08.2010 and not on 14.08.2010 as projected by the claim petitioner.

(b) Thus, this Court finds that the earliest document that came to an existence, in the case, which is Ex.P2 and the same was issued by the



C.M.A(MD)No.1045 of 2023

Manuel hospital, wherein, it is specifically mentioned as 'Non Medico Legal Cases' and consequently, there cannot be any intimation to the police regarding registration of the FIR and there is no document to show that the vehicle was involved in the accident and in the said accident, the claim petitioner had sustained injury and the document produced by the P.W.1 namely Ex.P2 the accident register issued by the Manuel hospital is found to be inconsistent with the version of P.W.1.

(c)With regard to the date of the accident, manner of the accident, there is no intimation to the police station. The petitioner also has not taken any steps to produce the document to substantiate that the accident had taken place on 14.08.2010.

17. On the contrary, Ex.P1-FIR which was registered only on 14.02.2011 almost one year after the accident. It appears that based upon the petition filed under Section 156 of Cr.P.C., before the learned Judicial Magistrate, Boothapandi, FIR was registered on 14.02.2011. The owner of the vehicle as well as the insurance company has categorically demonstrated before this Court that the vehicle was met with an accident on 18.08.2010 only and therefore, this Court is of the considered view that



C.M.A(MD)No.1045 of 2023

the version of P.W.1 is doubtful as the claim petitioner in the claim petition has stated that the accident had taken place on 14.08.2010 and hence, the findings of the Tribunal, that the involvement of the vehicle and the date of the accident and injuries sustained therein by the claim petitioner are not proved are fully justified and the Tribunal has rightly rejected the claim petition.

18. Hence, we find no reason to interfere with the order of dismissal passed by the Motor Accident Claims Tribunal – cum- Chief Judicial Magistrate, Nagercoil made in M.C.O.P.No.22 of 2012, dated 27.11.2015 and the same does not suffer from any irregularities or illegalities, warranting interference at this stage.

19. Accordingly, this Civil Miscellaneous Appeal is dismissed. No costs.

(T.K.R.J.) & (P.B.B.J)
19.12.2023

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C.M.A(MD)No.1045 of 2023

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To

- 1.The Motor Accident Claim Tribunal-cum-Chief Judicial Magistrate,
Nagercoil.
- 2.The Section Officer,
VR Section, Madurai Bench of Madras High Court,
Madurai.



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C.M.A(MD)No.1045 of 2023

**RMT.TEEKAA RAMAN, J.,
and
P.B.BALAJI,J**

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C.M.A(MD)No.1045 of 2023

19.12.2023