



WEB COPY



C.M.A.No.1541 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 26.02.2024

CORAM

THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.1541 of 2021

and

C.M.P.No.8075 of 2021

M/s.ICICI Lombard Insurance Company Ltd.,

“Chottabhai Centre”

No.140, 2nd Floor

Nungambakkam High Road

Chennai 600 034

... Appellant

Vs.

1.M.Premkumar

S/o.T.S.Muthukumarappa

8/7, Three Star Flat

State Bank Colony

Alwar Thiru Nagar

Chennai 600 046

2.Usha Premkumar

8/7, Three Star Flat

State Bank Colony

Alwar Thiru Nagar

Chennai 600 046 .

.. Respondents



C.M.A.No.1541 of 2021

Prayer: Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and Decree dated 23.10.2019 in MCOP.No.287 of 2014 on the file of the Motor Accident Claims Tribunal (II Special Subordinate Judge) (Small Causes Court) at Chennai.

For Appellant : Mr.R.Sree Vidhya

For Respondents : No appearance

J U D G M E N T

The Appeal has been filed against the Judgment and Decree dated 23.10.2019 in MCOP.No.287 of 2014 on the file of the Motor Accident Claims Tribunal (II Special Subordinate Judge) (Small Causes Court) at Chennai.

2. The Insurance Company is the Appellant herein, challenging the award passed in MCOP.No.287 of 2014 on the file of the Motor Accident Claims Tribunal (II Special Subordinate Judge) (Small Causes Court) at Chennai.

3. The Insurance Company filed the above Appeal on the point of liability.



C.M.A.No.1541 of 2021

WEB COPY

4. During the trial before the Tribunal, on the side of the claim Petitioner, PW1 was examined, Ex.P1 to Ex.P.21 were marked and on the side of the Respondents, RW1 & RW2 were examined and Ex.R1 to Ex.R3 were marked.

5. Heard the learned counsel for the Insurance Company/Appellant.

6. The 1st Respondent is the injured, while the 2nd Respondent is the owner of the vehicle. The 1st Respondent filed claim Petition in MCOP.No.287 of 2014 on the file of the Motor Accident Claims Tribunal (II Special Subordinate Judge) (Small Causes Court) at Chennai, claiming compensation for the injuries sustained by him in a road transport accident. The owner of the vehicle is the wife of the injured. As per Ex.P.11/FIR a vehicle bearing Reg. No.TN 10 Q 3262 came and dashed against the injured and due to which he fell down and sustained injuries. In the counter statement filed by the Insurance Company before the Tribunal, it is specifically stated that the alleged registration number is not a two wheeler and it is a four wheeler and one Mr.K.Sinosh is the owner of the vehicle and hence the injured himself being a tortfeasor he cannot claim compensation under the Motor Vehicles Act.



C.M.A.No.1541 of 2021

WEB COPY

7. On consideration of both oral and documentary evidence, the Tribunal has come to the conclusion that there is an accident in which the injured sustained injuries and awarded compensation and hence the Appeal.

8. Even though the learned counsel for the first Respondent before the Tribunal was served and name of the first and second Respondent also printed in the causelist, no one represented on behalf of Respondents 1 & 2. Hence, they are set exparte.

9. The main contention of the learned counsel for the Appellant/Insurance Company is that the injured himself is a tort feisor, the wife of the injured is the owner of the vehicle, no other vehicle is involved in the accident. He himself fell down on the road and sustained injuries and hence, he is not entitled for any compensation under the Motor Vehicles Act.

10. Heard the learned counsel for the Appellant and perused Ex.P.5/Accident Register issued by Sri Ramachandra Hospital, wherein it is stated as *“Alleged H/O skid and fall from two wheeler around 7.00 am near Valasaravakkam Vivek Shop on 30.07.2013”*. As per Ex.P11/FIR a vehicle is said to have been dashed against the vehicle driven by the claim Petitioner is bearing



C.M.A.No.1541 of 2021

Reg. No.TN 10 Q 3262. RW1/Sub Inspector, who had investigated the case in Cr.No.1111 had deposed that based upon the enquiry in RTO, Poonamallee, it is come to light that TN 10 Q 3262 is not a two wheeler as spoken to by PW1 or as mentioned Ex.P.11/FIR. However, on enquiry from the RTO, it revealed that the vehicle having Reg. No.TN 10 Q 3262 is a four wheeler and hence, this Court is of the considered view that a false vehicle has been implicated in order to claim compensation.

11. Admittedly, as per Ex.P.2/policy, personal accident coverage was given only to the owner not to the husband of the owner. Being a two wheeler, there is no question of servant or driver or cleaner as it is used to be in four wheeler. Taking into consideration the fact that the second Respondent is the wife of the injured and she also sustained injuries in the accident as per Ex.P.5/Accident Register, the injured skid and fell down from the two wheeler and so also Ex.R.1 and also taking note of the fact that the alleged vehicle said to have been involved in the accident, appears to be bogus and description does not fit to the description of the vehicle and hence, this Court come to the conclusion that the claim Petitioner on his own fell down from the vehicle on the road and sustained injuries and hence he is a tort feisor. Being a tort feisor, he cannot claim compensation under Section 166 of MV Act.



C.M.A.No.1541 of 2021

WEB COPY

12. It is open to the first Respondent to make claim against the second Respondent, who is the owner of the vehicle. The Insurance Company is permitted to withdraw the amount, if any deposited before the Tribunal in respect of compensation to the claim Petitioner.

13. Accordingly, this Civil Miscellaneous Appeal is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

26.02.2024

Index : Yes/No

Neutral citation : Yes/No

Speaking Order/Non-Speaking Order

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C.M.A.No.1541 of 2021

WEB COPY

The II Special Subordinate Judge
Court of Small Causes
Chennai 104.



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