



CMA No.1691 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.04.2024

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

CMA No.1691 of 2022

TATA AIG General Insurance Company Limited
225/2, Sri Vedhas Complex
First Floor, Itteri Road
Meyyanur
Salem-636 004.

.. Appellant

.Vs.

1.Ajithkumar

2.Kumar

.. Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, to set aside the award dated 22nd day of February, 2022 made in M.C.O.P.No.2176 of 2019, on the file of Motor Accident Claims Tribunal No.2 (Special Sub Court for Accident Claims No.2, Salem).

For Appellant : Mr.K.Vinod

For Respondents : Mr.S.P.Yuvaraj [R1]

No Appearance [R1]



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JUDGMENT

The Insurance Company has filed this appeal questioning the award passed by Motor Accident Claims Tribunal No.2 (Special Sub Court for Accident Claims No.2, Salem), in M.C.O.P.No.2176 of 2019, dated 22.2.2022.

2.The claimant in this case is the injured. The case of the claimant is that on 6.7.2019 at about 5.00 pm., he was traveling as a pillion rider in the two wheeler belonging to one C.Ajith Kumar who was the rider of the vehicle. The further case of the claimant is that the two wheeler was driven in a rash and negligent manner and when the two wheeler approached near hatsun milk depot at Goundampatti - Pudupatti Road, the two wheeler skidded and as a result, both the rider and the pillion rider fell down. The claimant who was the pillion rider sustained grievous injuries and was admitted to the hospital and he took treatment. It is under these circumstances, the claim petition came to be filed before the Tribunal seeking for compensation.

3.The Tribunal on considering the facts and circumstances of the case and on appreciation of oral and documentary evidence, came to a conclusion that the above said C.Ajith Kumar had driven the vehicle in a rash and negligent manner and as a result, the accident had taken place. Having rendered such a finding, the Tribunal proceeded to fix the compensation and the total compensation was arrived at Rs.4,10,044/-. This compensation was directed to be paid along with 7.5.% interest p.a. by the Insurance Company. Aggrieved by this award, the Insurance Company



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has filed the present civil miscellaneous appeal before this Court questioning the very finding on negligence that was given by the Tribunal.

4. Heard Mr.K.Vinod, learned counsel for the appellant Insurance Company, Mr.S.P.Yuvaraj, learned for the 1st respondent. The name of the 2nd respondent has been printed in the cause list. There is no representation either in person or through counsel.

5. This Court has carefully considered the submissions made on either side and perused the materials available on record. This Court had also carefully gone through the award passed by the Tribunal.

6. In the instant case, the accident had taken place on 6.7.2019. Immediately after the accident, the claimant had undergone treatment at Government Medical Hospital, Dharmapuri. The relevant documents were marked and the relevant case sheet issued by the Government Medical Hospital, Dharmapuri, was marked as Ex.X-1. On going through the same, it is seen that consistently it has been mentioned that the two wheeler was driven by the claimant and it was a self fall from the two wheeler. This was the position till the claimant was discharged from the hospital on 11.7.2019. All of a sudden, a complaint is given on 12.7.2019 by the claimant based on which an FIR came to be registered in Crime No.97 of 2019 by A.Pallipatti Police Station, Dharmapuri. While giving this complaint, the claimant



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came up with a new story, as if his cousin C.Ajith Kumar is the owner of the two wheeler and he had driven the two wheeler in which the claimant was the pillion rider. The two wheeler was driven by C.Ajith Kumar in a rash and negligent manner and as a result, the accident had taken place and the claimant sustained injuries. To add strength to this FIR, which was marked as Ex.P-1, the claimant also admits himself in another hospital named as Universal Hospital on 13.7.2019. The accident register that was given by this hospital has been marked as Ex.P.3. In this accident register, it is mentioned that the claimant was a pillion rider and he had sustained injuries due to the accident. The discharge summary that was given by this hospital was also marked as Ex.P.4 and on going through the same, it is seen that the claimant has once again reiterated that he was a pillion rider in the two wheeler.

7.It is even more curious to note that the so called owner/rider of the two wheeler viz., C.Ajith Kumar was not even made as a respondent in this case. One Kumar has been shown as the 1st respondent in the claim petition. If really, the accident had taken place in the manner in which the claimant is attempting to project it, the rider of the vehicle should also have sustained some injuries and in any case, the rider of the vehicle must have been made as a party in the claim petition and must have been examined, if really, the story projected by the claimant is true.

8.The Tribunal while discussing this issue has come to a conclusion that the claimant is the eye witness in this case since he was the pillion rider and therefore,



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credence must be given to the deposition of the claimant. This finding of the Tribunal is unsustainable since the defense taken by the Insurance Company is that a false complaint has been made by the claimant and to substantiate the same, the relevant documents were also relied upon and Tribunal has completely disregarded Ex.X-1 has solely taken the evidence of claimant to be the gospel truth and fixed the negligence on the part of the rider of the vehicle, who was not even a party in the claim petition.

9.The instant case is a textbook case of false claim made by the claimant. The claimant who was speaking the truth till 11.7.2019 to the effect that he sustained the injury due to self fall, started uttering lie probably due to some advise given and changed the version from 12.7.2019, as if one C.Ajith Kumar had driven the vehicle and the claimant was the pillion rider. To add insult of injury, the claimant once again goes ahead and admits himself in a hospital and gets an accident register by recording the version that he was the pillion rider in the two wheeler driven by C.Ajithj Kumar.

10.The proof required in a motor accident case is governed by the principle of preponderance of probabilities. It is not necessary for the claimant to prove the case beyond reasonable doubts as is required in a criminal case. However, that does not mean that a false claim will be disregarded by applying this principal. In a false claim, the very incident is being put to question and therefore, the Tribunal must be



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careful to properly assess the evidence and come to a conclusion. The case in hand clearly falls within the scope of a false claim made by the claimant and unfortunately the Tribunal did not properly appreciate the same.

11.This Court has absolutely no hesitation to interfere with the award passed by the Tribunal and accordingly the award passed in M.C.O.P.No.2176 of 2019, on the file of Motor Accident Claims Tribunal No.2 (Special Sub Court for Accident Claims No.2 Salem), is hereby set aside. If the appellant has deposited any amount pursuant to the award passed by the Tribunal, the same shall be permitted to be withdrawn with accrued interest, if any.

12.In the result, this civil miscellaneous petition stands allowed. No costs.

12.04.2024

Index : Yes/No
Speaking Order/Non-Speaking Order
Neutral citation : Yes/No
KP



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To

Motor Accident Claims Tribunal No.2
(Special Sub Court for Accident Claims No.2, Salem).



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N. ANAND VENKATESH., J
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