



Civil Miscellaneous Appeal No.339 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.04.2024

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THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Civil Miscellaneous Appeal No.339 of 2024

Ramesh
S/o.Raja

... Appellant

Vs.

1.R.Jagadesh

S/o.Ramachandran

[Notice to R1 may be dispensed with for the
time being and separate petition is filed]

2.National Insurance Company Ltd.,
represented by its Manager,
1st Floor, Karthikeya Complex,
403, B-10, Mettur Main Road,
Bhavani.

... Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the order made in MCOP No.147 of 2017 on the file of Motor Accident Claims Tribunal cum IV Additional District Judge, Bhavani, dated 08.12.2021.

For Appellant : Mr.C.Kulanthaivel

For Respondents : Mr.S.Arunkumar [R2]
R1 - Set *ex parte*



Civil Miscellaneous Appeal No.339 of 2024

JUDGMENT

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2. Heard Mr.C.Kulanthaivel, learned counsel for appellant and Mr.S.Arunkumar, learned counsel appearing for second respondent.

3. The case of the appellant is that one Ganesan was riding a TVS XL two-wheeler along with the appellant, who was the pillion rider. The vehicle was going from east to west at Komarapalayam Katheri Privu Service Road. At that point of time, the offending vehicle that was driven in a rash and negligent manner hit the two-wheeler ridden by the said Ganesan and as a result, both the said Ganesan and the appellant were thrown out of the two-wheeler and sustained multiple injuries all over the body. They were taken to the Government hospital, Komarapalayam, for first aid and thereafter, they underwent treatment at the National Hospital, Erode. It is under these circumstances, the claim petition came to be filed both by the rider as well as the pillion rider in



M.C.O.P.Nos.122 and 147 of 2017.

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4. The Tribunal, on considering the facts and circumstances of the case and on appreciation of evidence, came to a conclusion that the materials available on record sufficiently proves that the two-wheeler ridden by the first respondent was not the offending vehicle and the offending vehicle was actually a tractor. Under such circumstances, the Tribunal did not find any merits in the claim petitions and the same were dismissed. Aggrieved by the same, the present appeal has been filed before this Court.

5. Learned counsel for appellant submitted that the Tribunal came to a conclusion that the offending vehicle ridden by the first respondent was not involved in the accident by placing reliance upon the initial medical records like Accident Register and wound certificate and also the unexplained delay of 15 days in registration of the First Information Report, after completely disregarding the evidence of PW-3, who was an eye witness. Learned counsel further submitted that PW-1 to PW-3 have clearly deposed that the accident had taken place near the AVS Weigh



Bridge and the offending vehicle was ridden in a rash and negligent manner by the first respondent. As a result of the accident, the appellant sustained grievous injuries and had spent substantial amount towards medical treatment. That apart, the Medical Board has also issued disability certificate marked as Ex.C1 by recording temporary disability at 40%. Learned counsel, therefore, submitted that the award passed by the Tribunal requires the interference of this Court.

6. *Per contra*, learned counsel appearing on behalf of the second respondent insurance company submitted that the entire case was a set up case. The Tribunal, on appreciation of evidence, came to a conclusion that the offending vehicle in this case was actually a tractor and not a two-wheeler. This was quite evident from the initial documents that came into being immediately after the accident. That apart, the police were also present in the scene of occurrence within 15 minutes and were aware of the accident. In spite of the same, there was a delay of 15 days in registering the First Information Report and therefore, in the interregnum period, the claimants were attempting to project a case as if the offending vehicle was Royal Enfield Motor Cycle that was ridden by the first



respondent. Learned counsel submitted that, on appreciation of evidence, the Tribunal has doubted the very manner in which the accident was attempted to be projected by the claimants and had rightly dismissed the claim petitions. Hence, learned counsel sought for the dismissal of the appeal.

7. This Court has carefully considered the submissions made on either side and the materials available on record.

8. The claimants took a very specific stand that the accident had taken place only due to the rash and negligent driving on the part of the first respondent, who had ridden the Royal Enfield Motor Cycle. While dealing with this issue, the Tribunal took into consideration the following factors:

(a) RW-1, who is a doctor and who treated PW-1 and PW-2 in the hospital, was informed that the accident had taken place due to collusion between a tractor and a two-wheeler.

(b) The evidence of RW-2, who was again a doctor, attached to the



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National Hospital, also came up with the very same version as stated by RW-1.

- (c) Exs.R1 and R2, Accident Registers, wherein it has been mentioned that both PW-1 and PW-2 (rider and pillion rider) were conscious and they had informed RW-1 and RW-2 that the accident had taken place due to collusion between a tractor and a two-wheeler.
- (d) The evidence of PW-3, who claims to be an eye witness and who states that the police had come to the place of occurrence within 1/4 hour from the time of occurrence and had also examined PW-3 in this regard and obtained his signature.
- (e) There is an unexplained delay of 15 days in registering the First Information Report on the side of the claimants.
- (f) There is discrepancy in the place where the accident had taken place. In Ex.R1 and Ex.R2, the place of occurrence was mentioned as Katheri Privu opposite to Kongu Kalyana Mandapam. In the rough sketch, Kongu Kalyana Mandapam was not even found in the said place. This version has been given a go-by after the First Information Report has been registered wherein it has been stated that the accident had taken place at Komarapalayam Katheri Privu Service Road near



AVS Weigh Bridge. Thus, the place of occurrence had shifted from the earlier place that was mentioned in Ex.R1 and Ex.R2.

(g) A false complaint has been lodged by showing that the offending vehicle was ridden by the first respondent, which resulted in the registration of the First Information Report and filing of the final report.

9. The above reasons given by the Tribunal to disbelieve the entire incident as projected by the claimants, cannot be faulted with. There is no reason for the doctors to give a false evidence or to note down false address in Ex.R1 and Ex.R2. That apart, the police were aware of the accident within 15 minutes and there is no reason as to why it took 15 days for registration of the First Information Report. Obviously, the claimants have attempted to come up with a set up case just to get the compensation by showing the vehicle ridden by the first respondent as the offending vehicle. Curiously, the first respondent also remained *ex parte* and did not contest this case.

N.ANAND VENKATESH, J.



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Civil Miscellaneous Appeal No.339 of 2024

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10. In the light of the above discussion, this Court does not find any ground to interfere with the order passed by the Tribunal and there are no merits in the appeal.

In the result, this Civil Miscellaneous Appeal is dismissed. No costs.

08.04.2024

Speaking Judgment/Non-speaking Judgment

Index :Yes/No

Neutral citation: Yes/No

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To

The Motor Accident Claims Tribunal,
IV Additional District and Sessions Judge,
Bhavani.

Civil Miscellaneous Appeal No.339 of 2024